IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

STATE OF TEXAS, et al., *Plaintiffs,*	)	
vs.	)	Case No.1:18-cv-00068
UNITED STATES OF AMERICA, et al., *Defendants.*	)	

APPENDIX IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND MEMORANDUM IN SUPPORT

Volume 2

Exhibits 8 - 15

Exhibit 8

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

STATE OF TEXAS, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. ____________
	)	
UNITED STATES OF AMERICA, et al.,	)	
	)	
Defendants	)	

DECLARATION OF LLOYD B. POTTER, PH.D.

1. My name is Lloyd B. Potter, and I am over the age of 18 and fully competent in all respects to make this declaration. I have personal knowledge and expertise of the matters herein stated.

2. I was appointed State Demographer of Texas in June of 2010. I hold degrees of Ph.D. in sociology from The University of Texas at Austin, Master of Public Health in epidemiology from Emory University, Master of Science in education from the University of Houston at Clear Lake and Bachelor of Science in sociology from Texas A&M University. I have worked as an Assistant Professor at Fordham University, a post-doctoral fellow at Emory University and Centers for Disease Control and Prevention, a Behavior Scientist at the Centers for Disease Control and Prevention, and as a Research Scientist at the non-profit company Education Development

Center, Inc. I am currently a professor in the Department of Demography at The University of Texas at San Antonio where I also serve as the director of the Institute for Demographic and Socioeconomic Research (IDSER). I have extensive experience working as an applied demographer and my current work focuses on public policy related research and training applied demographers.

3. Based on my education, qualifications, experience and knowledge of the relevant literature, I believe the following statements are true and accurate.

4. Economic factors are strongly associated with many migrant flows. For example, differences in economic growth, wages, and the employment situation between the United States and Mexico are critical determinants of immigration, and migration of labor out of Mexico (Aguila, 2012). Most undocumented migrants coming to the U.S. are doing so to work. Massey et.al. found that that undocumented migration from Mexico appears to reflect U.S. labor demand and access to migrant networks (Massey, Durand, & Pren, 2014).

5. Most migration (inter-county) within the United States is employment related. Analysis of data from the Current Population Survey indicates that about 43% of moves across county lines between 2012 and 2013 were employment related and 30% were family related (Ihrke, 2014).

6. Kennan and Walker found that interstate migration decisions are influenced to a substantial extent by income prospects. Their research suggests that

the link between income and migration decisions is driven both by geographic differences in mean wages and by a tendency to move in search of a better locational match when the income realization in the current location is unfavorable (Kennan & Walker, 2011).

7. In part, the Immigration Reform and Control Act (IRCA) is intended to restrict unauthorized immigration into to the United States by making it illegal for employers to hire unauthorized immigrants and imposing sanctions on employers who employ unauthorized immigrants (Wishnie, 2007). Several states have adopted laws to require E-Verify to make hiring of undocumented immigrants more difficult. Orrenius and Zadvodny found that possible undocumented immigrants in states that had implemented such efforts may have more difficulty working and more difficulty changing jobs (Orrenius & Zavodny, 2016). They also found some evidence suggesting "...that most of the drop in the number of already-present unauthorized immigrants in states that adopt universal E-Verify laws is due to them leaving the USA entirely (Orrenius & Zavodny, 2016)."

8. While DACA participants have motivation to stay in the U.S. and to comply with DACA rules, it is reasonable to conclude that some DACA participants would return to their country of origin if they lose or are not given permission to work in the U.S. The causes of return migration are difficult to address because there is limited research and understanding of return migration. Among DACA participants there is variation in a number of

characteristics such as age at immigration, tenure in the U.S., educational attainment, language fluency, and others. Some of these characteristics and combinations would make it more or less likely for some DACA participants to emigrate if they were denied permission to work in the U.S.

9. In a study of young immigrants to the U.S., Regan and Olsen found they were less likely than older immigrants to return to their country of origin (Reagan & Olsen, 2000). Child and young immigrants who migrated later in their childhood (having spent more time in their country of origin) were more likely to return to their country of origin than those who immigrated when they were younger. They also found that immigrants with college degrees were more likely to return to their country of origin than those without.

10. In a study of characteristics associated with emigration of foreign born persons in the U.S. (return migration), Van Hook and Zhang found that "indicators of economic integration (home ownership, school enrollment, poverty) and social ties in the U.S. (citizenship, having young children, longer duration in the United States) deter emigration (Van Hook & Zhang, 2011)." They found that indicators favoring return migration to country of origin included having connections with the sending society, such having a spouse or close family there.

11. With loss of permission to work in the U.S., some DACA participants could be expected to migrate out of the U.S. back to their country of origin or to

another country where they would be able to work. DACA participants who would be more likely to return to their country of origin, under conditions where they could not work legally in the U.S., could be expected be similar to undocumented migrants who return to country of origin. That is, those DACA participants who migrated to the U.S. when they were older, who have strong family relationships in their country of origin, those who had met savings goals, and those who had achieved higher levels of education would be more likely to emigrate under conditions of not being able to work in the U.S. The variation in characteristics within the DACA applicant population suggests that some do have characteristics that have been associated with higher probability of emigration from the U.S. among undocumented immigrants (i.e., migrating as older teenagers and obtaining higher levels of educational attainment).

12. References:

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20. Wishnie, M. J. (2007). Prohibiting the employment of unauthorized immigrants: The experiment fails. U. Chi. Legal F., 193.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 26 day of April, 2018.

LLOYD POTTER, PH.D.

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Educational Background:

M.P.H. Epidemiology, Emory University, Rollins School of Public Health, spring 1993.

Ph.D. Demography/Sociology, University of Texas at Austin, fall 1989.
Dissertation: Proximate and Non-Proximate Causes of Racial Life Expectancy Differentials in the U.S., 1970 and 1980. Co-Chairs: Omar Galle and Teresa Sullivan

M.S. Education, University of Houston Clear Lake, spring 1981.

B.S. Sociology, Texas A&M University, fall 1979.

Clear Lake High School, Houston, TX. Clear Creek Independent School District, spring 1975

Professional Positions:

2010-present	State Demographer of Texas and Director of the Texas Demographic Center.
2008-present	Director, Institute for Demographic and Socioeconomic Research, University of Texas at San Antonio, San Antonio, TX.
2008-present	Professor, Department of Demography, University of Texas at San Antonio, San Antonio, TX.
2008-present	Adjunct faculty, The University of Texas School of Public Health at Houston through the San Antonio Regional Campus.
2014-2015	Associate Dean for Research, College of Public Policy, University of Texas at San Antonio, San Antonio, TX.
2009- 2011	Interim-Chair, Department of Demography, University of Texas at San Antonio, San Antonio, TX.
2001-2004	Adjunct faculty member, University of Michigan School of Public Health, Summer Epidemiology Seminar.
2000-2008	Director, Center for the Study and Prevention of Injury, Violence, and Suicide. Education Development Center Inc., Newton, MA.

1998-99	Detail from CDC to Massachusetts Department of Public Health (9 months) – Injury Surveillance Program, Boston, Massachusetts. Developed surveillance report on suicide in the state.
1997	Detail from CDC to Hanoi School of Public Health, Field Epidemiology Training Program, Hanoi, Vietnam. Developed course on demographic methods in public health.
1995-2000	Team Leader (Branch Chief), Youth Violence and Suicide Prevention, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, Atlanta, Georgia. Managed CDC's scientific and grant program portfolio on youth violence and suicide prevention.
1993-1995	Team Leader, Suicide Prevention, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, Atlanta, Georgia. Manage CDC scientific program on suicide prevention.
1992	Consultant, Field Epidemiology Training Program, Taiwan Department of Health, Taipei, Taiwan, R.O.C. Provided training on research and survey methodology.
1991-93	National Institute of Mental Health HIV/AIDS Post-Doctoral Fellow, Emory University School of Public Health/Centers for Disease Control and Prevention, Atlanta, Georgia. Received Masters of Public Health and conducted HIV/AIDS prevention research at CDC.
1989-91	Assistant Professor of Sociology, Fordham University, Bronx, New York.
1990 & 91	Lecturer, summers, University of Texas at Austin, Department of Sociology. Managed and taught the NSF funded Research Experience for Undergraduates (REU) program.
1989	Research Associate, University of Texas at Austin, Departments of Social Work and Home Economics. Conducted research on adoption.
1988	Research Associate, University of Texas at Austin, Population Research Center.
1987-88	Research Associate, Texas A&M University, Department of Rural Sociology, College Station, Texas. Assisted with book on farm financial crisis, Texas population estimates and projections and socioeconomic impact assessments
1986	Social Science Analyst, summer, Center for International Research, U.S. Bureau of the Census, Washington D.C. Developed population estimates, projections, and profiles for various countries
1985	United Nations Intern, summer, Population Policy Section, New York, New York. Developed population estimates, projections, and profiles for various countries
1984-87	Research Assistant,, University of Texas at Austin, Population Research Center. Conducted research on consumer bankruptcy
1983-84	Research Assistant, Texas A&M University, Department of Rural Sociology, College Station, Texas. Assisted with population estimates and projections for Texas.
1981-83	Teacher, LaPorte Independent School District, LaPorte, Texas.

Awards and Honors:

2017-present	Peter Flawn Professor
2012	Outstanding Clear Creek Independent School District (CCISD) Alumni Award, Clear Creek Education Foundation.

2005	Allies for Action Award, Suicide Prevention Action Network
2000	Special Act of Service Award, CDC. For leadership in the conceptualization and production of "Best Practices of Youth Violence Prevention."
2002	Surgeon General's Exemplary Service Award. For leadership in developing a National Strategy for Suicide Prevention.
1998	Builder Award for the National Strategy for Suicide Prevention, Suicide Prevention Advocacy Network
1996	Special Act of Service Award, CDC. For leadership toward establishing CDC's Behavioral and Social Science Working Group.
1996	Special Act of Service Award, CDC. For efforts to assess achievement of Healthy People 2000 objectives in the area of injury and violence.
1993-96	Equal Opportunity Award, CDC. For leadership toward creating a diverse and work environment.
1986	Professional Development Award, Graduate School, University of Texas at Austin
1984-85 & 1988-89	National Institute of Child Health and Development Trainee. University of Texas at Austin.

Research Activities Summary:

Peer Reviewed

1. Valenzuela, C., Valencia, A., White, S., Jordan, J. J., Cano, S. L., Keating, J. P., Nagorski, J. J., Potter, L. B. An analysis of monthly household energy consumption among single-family residences in Texas, 2010, Energy Policy, 2014(69):263-272, ISSN 0301-4215, http://dx.doi.org/10.1016/j.enpol.2013.12.009. (senior and corresponding author with student as first).
2. Howard, J.T., Potter, L.B., An assessment of the relationships between overweight, obesity, related chronic health conditions and worker absenteeism. Obesity Research & Clinical Practice 2014(8):1-15. (student first author)
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7. Powell K, Kresnow M, Mercy J, Potter L, Swann A, Frankowski R, Lee R, Bayer T. Alcohol Consumption and Nearly Lethal Suicide Attempts. Suicide and Life Threatening Behavior, 2001;31(5):SS 30-41.
8. Potter L, Kresnow M, Powell K, Simon T, Mercy J, Lee R, Frankowski R, Swann A, Bayer T, O'Carroll P. The Influence of Geographic Mobility on Nearly Lethal Suicide Attempts. Suicide and Life Threatening Behavior, 2001;31(5):SS 42-48.

9. Kresnow M, Ikeda R, Mercy J, Powell K, Potter L, Simon T, Lee R, Frankowski R. An Unmatched Case-Control Study of Nearly Lethal Suicide Attempts in Houston, Texas: Research Methods and Measurements. Suicide and Life Threatening Behavior, 2001;31(5):SS 7-20.
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12. Ikeda R, Kresnow M, Mercy J, Powell K, Simon T, Potter L, Durant T, Swahn M. Medical Conditions and Nearly Lethal Suicide Attempts. Suicide and Life Threatening Behavior, 2001;31(5):SS 60-68.
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15. Kresnow M, Powell KE, Webb KB, Mercy JA, Potter LB, Simon TR, Ikeda RM, Frankowski R. Assigning time-linked exposure status to controls in unmatched case-control studies: alcohol use and nearly lethal suicide attempts. Statistics in Medicine 2001;20(9/10):1479-85
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19. Potter L, Kresnow M, Powell K, O'Carroll P, Lee R, Frankowski R, Swann A, Bayer T, Bautista M, Briscoe M. Identification of nearly fatal suicide attempts: Self-Inflicted Injury Severity Form. Suicide and Life-Threatening Behavior. 28(2):174-186, 1998.
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27. Galle O, Burr J, Potter L. Rethinking Measures of Migration: On the Decomposition of Net Migration. Social Indicators Research, 28, 1992.
28. Potter L. Socioeconomic Determinants of Black-White Male Life Expectancy Differentials, 1980. Demography, 28(2):303-322, 1991.
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Edited Book

1. Hoque, N., Potter, LB. (eds), Emerging Techniques in Applied Demography, Dordrecht Heidelberg New York London: Springer, (2014). ISBN 978-94-017-8989-9.

Book Chapters

1. Potter, L. Chapter 13 Youth Suicide. In Liller KD (ed), Injury Prevention for Children and Adolescents: Research, Practice, and Advocacy 2nd Edition. Washington, DC: American Public Health Association, 2012, eISBN: 978-0-87553-250-9
2. Potter L. Violence Prevention. In Gorin SS, Arnold J (eds), Health Promotion in Practice, Chapter 12 (pp. 392-426). San Francisco, CA: Jossey-Bass, 2006.
3. Potter L. Youth Suicide. In Liller KD (ed), Injury Prevention for Children and Adolescents: Research, Practice, and Advocacy, Chapter 13 (pp. 321-340). Washington, DC: American Public Health Association, 2006.
4. Potter L. Public Health and Suicide Prevention. In Lester D (ed), Suicide Prevention: Resources for the New Millennium, Chapter 5 (pp. 67-82). Ann Arbor, MI: Sheridan Books, 2000.
5. Potter L. Understanding the Incidence and Origins of Community Violence: Toward a Comprehensive Perspective of Violence Prevention. In Gullota T (ed), Violence In Homes And Communities, Chapter 4 (pp. 101-132). Sage Publications, 1999.
6. Cohen L, Potter L. Injuries and Violence: Risk Factors and Opportunities for Prevention During Violence. In: Fisher M, Juszczak L, Klerman L, eds. Adolescent Medicine: Prevention Issues in Adolescent Health Care. Philadelphia, PA: Hanley & Belfus, Inc., 1999:125-135.
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8. Potter L, Powell K. The Public Health Approach to Suicide Prevention in the United States. Pp.329-345, in Ramsey RF, Tanney BL (`eds), Global Trends in Suicide Prevention: Tow ard the Development of National Strategies for Suicide Prevention. Mumbai, India: Tata Institute of Social Sciences, 1996.
9. Murdock S, Leistritz F, Hamm R, Albrecht D, Potter L, Backman K. Impacts of the Farm Financial Crisis of the 1980s on Resources and Poverty in Agriculturally

Dependent Counties in the United States. Pp. 67-94 in Rodgers H, Weiher G, (eds.). Rural Poverty: Special Causes and Policy Reforms. NY:Greenwood Press 1989.

10. Murdock S, Leistritz F, Hamm R, Albrecht D, Potter L, Backman K. Impacts of the Farm Financial Crisis of the 1980s on Resources and Poverty in Agriculturally Dependent Counties in the United States. Policy Studies Review, 1988;7(4):810-827.

11. Murdock S, Potter L, Hamm R, Backman K, Albrecht D, Leistritz L. The Implications of the Current Farm Crisis for Rural America. Pp. 169-184 in Steve Murdock and Larry Leistritz (eds.) The Farm Financial Crisis: Socioeconomic Dimensions and Implications for Producers and Rural Areas. Boulder, Colorado: Westview Press, 1988.

12. Murdock S, Potter L, Hamm R, Albrecht D. Demographic Characteristics of Rural Residents in Financial Distress and Social and Community Impacts of the Farm Crisis. Pp. 113- 140 in Steve Murdock and Larry Leistritz (eds.) The Farm Financial Crisis: Socioeconomic Dimensions and Implications for Producers and Rural Areas. Boulder, Colorado: Westview Press, 1988.

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14. Murdock S, Potter L, Backman K, Hamm R, Hwang S. Patterns of Post-1980 Population Change in Towns and Cities in Texas: An Analysis of the U.S. Bureau of the Census Population Estimates for 1982, 1984 and 1986. Department of Rural Sociology Technical Report No. 88-2. College Station, Texas: The Texas Agricultural Experiment Station, March 1988.

15. Murdock S, Schriner E, Hamm R, Jones L, Potter L. An Analysis of Selected Human Resource and Environmental Impact Dimensions of the Amarillo and Dallas-Fort Worth Super-Conducting Super Collider Siting Areas. Report submitted to The National Research Laboratory Commission, Office of the Governor, State of Texas, July 1987.

Commentary

1. Rosenberg M, Mercy J, Potter L. Firearms and suicide. New England Journal of Medicine. 1999 Nov 18;341(21):1609-11

2. Potter L, Rosenberg M, Hammond W. Suicide in youth: a public health framework [comment]. Journal of the American Academy of Child & Adolescent Psychiatry. 37(5);484-7, 1998 May.

Other

1. White, S., Potter, L. B., You, H., Valencia, A., Jordan, J., & Pecotte, B. (2016). Texas Mobility. demographics.texas.gov/Resources/publications/2016/2016_11_01_TexasMobility.pdf

2. Valencia, A., Potter, L. B., White, S., You, H., Jordan, J., & Pecotte, B. (2016). Aging in Texas: Introduction. demographics.texas.gov/Resources/publications/2016/2016_06_07_Aging.pdf

3. Potter, L. Community Assessment: Wintergarden Head Start and Early Head Start Program 2014. Institute for Demographic and Socioeconomic Research, University of Texas at San Antonio, 2014.

4. Potter, L. Community Assessment AVANCE-San Antonio Head Start and Early Head Start Program 2014. Institute for Demographic and Socioeconomic Research, University of Texas at San Antonio, 2014.
5. Potter, L., Valenzuela, C., Flores, M., Jordan, J., Valencia, l., White, S., Keating, J., Canos,S., Nagorski, J., Karuppusamy, S. Robinson. S. Modeling Household Energy Consumption in Bexar County, 2010, Confidential Research Report. Institute for Demographic and Socioeconomic Research, University of Texas at San Antonio, 2014.
6. Potter, L. Community Assessment Update, City of San Antonio Head Start Program. Institute for Demographic and Socioeconomic Research, University of Texas at San Antonio, 2013
7. Potter, L (Chair), Horowitz, R., Robin, D., Tillyer, R. Recommendations for Fostering Research Productivity and Creating a Research Culture at the University of Texas at San Antonio. UTSA Research Advisory Board - Sub-Committee on Macro Research Issues, 2013
8. You, H., White, S., Potter, L. An Examination of Static and Dynamic Aspects of Uninsurance In Texas. Institute for Demographic and Socioeconomic Research. Report for Methodist Healthcare Ministries. University of Texas at San Antonio, 2012.
9. Potter, L., Ozuna, C., Campbell, J. Community Assessment San Antonio & Bexar County Head Start Program 2012. . Institute for Demographic and Socioeconomic Research, University of Texas at San Antonio, 2012
10. Garza, J., Flores, M., Jordan, J., Potter, L. Community Assessment Report for San Antonio Head Start. Institute for Demographic and Socioeconomic Research, University of Texas at San Antonio, 2010
11. Garza, J., Potter, L., Jordon, J. Community Assessment Report for San Antonio Head Start. Institute for Demographic and Socioeconomic Research, University of Texas at San Antonio, 2009.
12. Malley E, Posner M, Potter L. Suicide risk and prevention for lesbian, gay, bisexual,and transgender youth. Suicide Prevention Resource Center. Newton, MA: Education Development Center, Inc. 2008.
13. Potter L, Silverman M, Connorton E, Posner M. Promoting Mental Health and Preventing Suicide in College and University Settings. Suicide Prevention Resource Center, Newton, MA: Education Development Center, Inc., 2004.
14. Potter L. Suicide Prevention: Prevention Effectiveness and Evaluation. Atlanta, GA: SPAN, USA, 2001.
15. Silverman M, Davidson L, Potter L, (eds.) National Suicide Prevention Conference Background Papers, October 1998, Reno, Nevada. Suicide and Life-Threatening Behavior, 31(S), 2001.
16. Potter L, Hasbrouk L. Influence of Homicide on Racial Disparity in Life Expectancy --- United States, 1998. MMWR, September 14, 2001 / 50(36);780-3.
17. Davidson L, Potter L, Ross V. The Surgeon General's Call To Action To Prevent Suicide. Washington, DC: U.S. Public Health Service,1999.
18. Moscicki E, Muehrer P, Potter L. Introduction to Supplemental Issue: Research Issues in Suicide and Sexual Orientation. Suicide and Life-Threatening Behavior 1995;Supplement:25:1-3.

19. Kachur S, Potter L, James S, Powell K. Suicide in the United States, 1980-1992. Atlanta: Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 1995. Violence Surveillance Summary Series, No. 1.
20. O'Carroll P, Potter L., Mercy J. Suicide Contagion and the Reporting of Suicide: Recommendations from a National Workshop. MMWR 43(No. RR-6):8-18, 1994
21. O'Carroll P, Potter L. Programs for the Prevention of Suicide Among Adolescents and Young Adults. MMWR 43(No.RR-6):1-7, 1994

Under review:

Valenzuela, C., Potter, L., Differential Residential Energy Consumption Patterns by Race and Ethnicity and Implications for Addressing Inequalities through Conservation Strategies. Revised and resubmitted (March 2018), Journal of Energy Policy.

Selected Funding History:

9/15-8/20 The New 100th Meridian: Urban Water Resiliency in a Climatic and Demographic Hot Spot (Co-PI). Funder: National Science Foundation.

8/15-present Demographic Data and Assistance (PI). Funder: Texas Department of Transportation

1/12-8/13 SA2020 Indicators and Education Data (PI). Funder: City of San Antonio

1/12-6/13 Energy Efficiency in Residential Buildings (PI). Funder: CPS Energy

6/12-9/12 Demographic Profile and Projections of San Marcos, Texas (PI). Funder: City of San Marcos.

2/09-present Head Start Community Assessment (PI). City of San Antonio

8/09-present Estimation Allocation Factors for Local Workforce Development Areas (PI). Funder: Texas Workforce Commission.

4/08-7/08 Development of Indicators for Violence Against Children (PI). Funder: World Health Organization and UNICEF.

9/07-9/09 TEACH-VIP E-Learning Initiative (PI). Funder: Centers for Disease Control and Prevention

9/02-9/10 Suicide Prevention Resource Center (PI). Funder: Substance Abuse and Mental Health Services Administration.

4/02-8/11 Children's Safety Network National Resource Center (PI). Health Resource and Services Administration, Maternal and Child Health Bureau.

Teaching:

Dissertations chaired:

Jewel Barnett, December 2017, Barriers to Health: Place and Food Insecurity as Determinants of Childhood Obesity

Pamela Willrodt, July 2016, Vietnam-Era Veteran Health: A Life-Course Perspective at the End of Middle-Adulthood

Mikiko Oliver, August 2015, Population Aging and Economic Growth in the United States and Japan

Alexis Santos Lozono, April 2015, Inequalities in Human Papillomavirus Vaccination for Female Adolescents in the United States

John Garza, April 2014, Spatially Oriented Demographic Determinants of Foreclosures in Bexar County

Sadasivan Karuppusamy, September 2013, The Determinants and Trends in the Household Energy Consumption for Different End Uses in the United States During 2001-2009

Carlos Valenzuela, April 2013, An Analysis of Household Energy Consumption by Race/Ethnic Composition: Incorporating Racial Stratification in the Lifestyle Perspective,

Frank Martinez III, December 2012, Las Colonias de la Frontera: A Study of Substandard Housing Settlements along the Texas-Mexico Border

Dissertation Committee member:

Dorian Galindo, May 2018
Sharon Goodwin, May 2017
Rebecca Adeigbe, May 2017
Clarissa Ozuna, December 2017
Xiaoling Liang, August, 2017
Paul Chance Kinnison, June 2016
Danielle Gordon, May 2016
Heidy Colon Lugo, December 2015
Romona Serban, August 2015
Mikiko Oliver, August 2015
Jeffrey Howard, April 2014
Susanne Schmidt, December 2013
Jinny Case , June 2013
Brian Munkombwe, April 2013
Rabindra K.C. ,December 2013
Mathew Martinez, December 2013
Ke Meng , December 2012
Samantha John, December 2012
Victoria Locke, May 2012
Alma Martinez-Jimenez, December 2011
Lila Valencia, May 2011
David Armstrong , May 2011
Emma Mancha, May 2011
Joseph Campbell, May 2011

Mary Hogan, May 2011
Gilbert Suarez, May 2011
Mike Cline, August 2010
Miguel Flores, August 2010
Deborah Perez, August 2010
Eliza Hernandez, August 2010
Jennifer Roth, August 2010
Marguerite Sagna, August 2010
Mary Bollinger, May 2010

Courses taught at UTSA (all graduate):

1. Applied Demography and Urban and Regional Planning
2. Applied Demography in Policy Settings
3. Demographic Methods of Analysis I
4. Demographic Methods of Analysis II
5. Social Demography and Community Trends
6. Social and Economic Impact Assessment
7. Survey Methods for Demographers
8. Special Topic Reading Courses (multiple)
9. Dissertation hours (multiple)

Professional

Co-Editor: Population Research and Policy Review 2015 (peer-reviewed journal)
Peer reviewer:
Suicide and Life-Threatening Behavior
American Journal of Preventive Medicine
American Journal of Public Health
Archives of General Psychiatry
Demography
Injury Prevention
New England Journal of Medicine

Membership:

Southern Demographic Association, Past-President
Population Association of America
American Sociological Association
Rural Sociological Association.
International Union for the Scientific Study of Population
American Public Health Association

Miscellaneous:

State Demographer of Texas, 2010 to Present
Testimony on demographic topics for Texas House and Senate standing and special committees
Consultation with Texas House and Senate members and staff members on various demographic topics
Demographic analysis for San Antonio Mayor's Office for Pre-K for SA
Public speaking on demographic topics (~35 per year http://demographics.texas.gov/Presentations)
San Antonio P-16 Data Support Council Member
San Antonio CI Now Board Chair
Applied Demography Conference, organizer and program chair for 2010, 2012, 2014, 2017.

Exhibit 9

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

STATE OF TEXAS, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No.
	)	
UNITED STATES OF AMERICA, et al.,	)	
	)	
Defendants	)	

DECLARATION OF LEONARDO R. LOPEZ

My name is Leonardo R. Lopez, and I am over the age of 18 and fully competent in all respects to make this declaration. I have personal knowledge and expertise of the matters herein stated.

1. I am the Associate Commissioner for School Finance/Chief School Finance Officer at the Texas Education Agency ("TEA"). I have worked for TEA in this capacity since June 2016, having previously served as the Executive Director of Finance for the Austin Independent School District ("AISD") for four years. Prior to my time at AISD, I served for ten years in a variety of roles for TEA, including six years as the Foundation School Program Operations Manager for the TEA's State Funding Division.

2. In my current position, I oversee TEA's school finance operations, including the administration of the Foundation School Program and analysis and

processing of financial data. My responsibilities also include representing TEA in legislative hearings and school finance-related litigation.

3. TEA estimates that the average funding entitlement for 2018 will be $8,110 per student in attendance for an entire school year. If a student qualifies for the additional Bilingual and Compensatory Education weighted funding (for which most, if not all, UAC presumably would qualify), it would cost the State $9,841 to educate each student in attendance for the entire school year. Assuming additional Bilingual and Compensatory Education weighted funding, comparable student costs for fiscal year 2019 would be $9,826.

4. TEA has not received any information directly from the federal government regarding the precise number of unaccompanied children ("UAC") in Texas. However, I am aware that data from the U.S. Health and Human Services ("HHS") Office of Refugee Resettlement indicates that 3,272 UAC were released to sponsors during the 12-month period covering October 2014 through September 2015; 6,550 UAC were released to sponsors during the 12-month period covering October 2015 through September 2016; and 5,374 UAC were released to sponsors during the 12-month period covering October 2016 through September 2017. If each of these children is educated in the Texas public school system and qualifies for Bilingual and Compensatory Education weighted funding (such that the State's annual cost to educate each student for fiscal years 2016, 2017, and 2018 would be roughly $9,573, $9,639, and $9,841, respectively), the annual costs to educate these groups of children

for fiscal years 2016, 2017, and 2018 would be approximately $31.32 million, $63.13 million, and $52.89 million, respectively.

5. Additionally, if the same number of UAC are released to sponsors during the 12-month period covering October 2017 through September 2018 as were released during the 12-month period covering October 2016 through September 2017, and if each of these children is educated in the Texas public school system and qualifies for Bilingual and Compensatory Education weighted funding (such that the State's annual cost to educate each student for fiscal year 2019 would be roughly $9,826), the State's annual cost to educate this group of children for fiscal year 2019 would be approximately $52.81 million. Currently, all the costs of educating these students would be borne by the State.

6. School formula funding is comprised of state and local funds. The state funding is initially based on projections made by each school district at the end of the previous biennium. Districts often experience increases in their student enrollment from year to year, and the State plans for an increase of approximately 70,000 students in enrollment growth across Texas each year.

7. The Foundation School Program, which serves as the primary funding mechanism for providing state aid to public schools in Texas, currently has a deficit of funds that is expected to continue in fiscal year 2018 (September 2017 – August 2018). As of February 2018, this estimated deficit was $143.4 million, and the State cannot accommodate any additional UAC without adding to this deficit. Therefore, any Foundation School Program funds that are utilized to cover the State's costs of

providing public education to UAC in Texas would not otherwise be spent and instead would be used to reduce the deficit.

8. Based on my knowledge and expertise regarding school finance issues impacting the State of Texas, I anticipate that the total costs to the State of providing public education to UAC will rise in the future to the extent that the number of UAC enrolled in the State's public school system increases.

9. All of the facts and information contained within this declaration are within my personal knowledge and are true and correct.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 24th day of April, 2018.

DIANE O. SALDANA
Notary Public, State of Texas
Comm. Expires 03-22-2022
Notary ID 125616163

LEONARDO R. LOPEZ

Exhibit 10

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

STATE OF TEXAS, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. ____________
	)	
UNITED STATES OF AMERICA, et al.,	)	
	)	
Defendants	)	

DECLARATION OF MONICA SMOOT

My name is Monica Smoot, and I am over the age of 18 and fully competent in all respects to make this declaration. I have personal knowledge and expertise of the matters herein stated.

1. I am the Chief Data and Analytics Officer of the Texas Health and Human Services Commission's Center for Analytics and Decision Support (CADS). The Texas Health and Human Services Commission (HHSC) is the state agency responsible for ensuring the appropriate delivery of health and human services in Texas. As such, HHSC has operational responsibility for

certain health and human services programs and oversight authority over the state health and human services (HHS) agencies.

2. As a part of my employment with HHSC, I am responsible for analytic and quantitative research on health care utilization, demographic trends, and enrollment patterns for the state's health care and human service programs, including Medicaid. I am also responsible for program evaluation activities and analytic support across all of the HHS agencies and programs.

3. I have served in my current position since January 1, 2017. Prior to that, I served as the manager for the Data Dissemination Unit within CADS.

4. In 2007, as part of the 2008-2009 General Appropriations Act, the Texas Legislature required HHSC to report the cost of services and benefits provided by HHSC to undocumented immigrants in the State of Texas. This report, also known as the Rider 59 Report, was first completed by HHSC in 2008. Due to numerous requests for more recent information following the issuance of the 2008 report, the Rider 59 Report was updated in 2010, 2013, 2014 and 2017. The Rider 59 Report completed in 2017 covered state fiscal year (SFY) 2015.

5. Attached to this declaration are true and current copies of the following documents:

- Exhibit 1: SFY07 Report on Services and Benefits Provided to Undocumented Immigrants, the original version of the Rider 59 Report prepared by HHSC in 2008.
- Exhibit 2: SFY09 Report on Services and Benefits Provided to Undocumented Immigrants, the 2010 update of the Rider 59 Report.
- Exhibit 3: SFY11 Report on Services and Benefits Provided to Undocumented Immigrants, the 2013 update of the Rider 59 Report.

- Exhibit 4: SFY13 Report on Services and Benefits Provided to Undocumented Immigrants, the 2014 update of the Rider 59 Report.
- Exhibit 5: SFY15 Report on Services and Benefits Provided to Undocumented Immigrants, the 2017 update of the Rider 59 Report.

6. Each of the records attached to this declaration is kept by HHSC in the course of its regularly conducted activity, and it was HHSC's regular practice for an employee or representative of HHSC, with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time of the act, event, condition, opinion, or diagnosis.

7. HHSC provides three principal categories of services and benefits to undocumented immigrants in Texas: (i) Texas Emergency Medicaid; (ii) the Texas Family Violence Program (FVP); and (iii) Texas Children's Health Insurance Program (CHIP) Perinatal Coverage. Undocumented immigrants also receive uncompensated medical care from public hospitals in the State.

8. Emergency Medicaid is a federally required program jointly funded by the federal government and the states. The program provides Medicaid coverage, limited to emergency medical conditions including childbirth and labor, to undocumented immigrants living in the United States. Because HHSC Medicaid claims data do not conclusively identify an individual's residency status, the portion of Emergency Medicaid payments attributable to undocumented immigrants must be estimated. The total estimated cost to the State for the provision of Emergency Medicaid services to undocumented immigrants residing in Texas was approximately $80 million in SFY 2007, $62 million in SFY 2009, $71 million in SFY 2011, and $90 million in SFY 2013; the estimate for SFY 2015 is $73 million.

9. The Family Violence Program contracts with non-profit agencies across the State to provide essential services to family violence victims, including undocumented immigrants, in three categories: shelter centers, non-residential centers, and Special Nonresidential Projects. Because the FVP does not ask individuals about their residency status, the portion of the FVP's expenditures attributable to undocumented immigrants must be estimated. The total estimated cost to the State for the provision of direct FVP services to undocumented immigrants residing in Texas was $1.2 million in SFY 2007, $1.3 million in SFY 2009, $1.3 million in SFY 2011, and $1.4 million in SFY 2013; the estimate for SFY 2015 is $1.0 million.

10. Texas CHIP Perinatal Coverage provides prenatal care to certain low-income women who do not otherwise qualify for Medicaid. There is no way to definitively report the number of undocumented immigrants served by CHIP Perinatal Coverage because the program does not require citizenship documentation. CHIP Perinatal Coverage expenditures were not included in HHSC's original Rider 59 Report because a full year of program data was not available when the report was prepared. The total estimated cost to the State for CHIP Perinatal Coverage to undocumented immigrants residing in Texas was $33 million in SFY 2009, $35 million in SFY 2011, and $38 million in SFY 2013; the estimate for SFY 2015 is $30 million.

11. In the 2008 and 2010 versions of the Rider 59 Report, HHSC also provided estimates of the amount of uncompensated medical care provided by state public hospital district facilities to undocumented immigrants. In these reports, HHSC estimated that the State's public hospital district facilities incurred approximately $596.8 million in uncompensated care for undocumented immigrants in SFY 2006 and $716.8 million in SFY 2008. HHSC has not provided any estimates of uncompensated care for

undocumented immigrants in more recent versions of the Rider 59 Report.

12. Based on my knowledge, expertise, and research regarding the provision of services and benefits to undocumented immigrants by HHSC, I believe that the total costs to the State of providing such services and benefits to undocumented immigrants will continue to reflect trends to the extent that the number of undocumented immigrants residing in Texas increases or decreases each year.

13. All of the facts and information contained within this declaration are within my personal knowledge and are true and correct.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 9th day of April, 2018.

Monica Smoot

MONICA SMOOT

REPORT TO THE UNITED STATES CONGRESS ON SERVICES AND BENEFITS PROVIDED TO UNDOCUMENTED IMMIGRANTS

Required Reporting for

Rider 59
House Bill Number 1
Eightieth Texas Legislature, Regular Session

EPIDEMIOLOGY TEAM
Strategic Decision Support
Financial Services Division

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

— November 2008 —

Table of Contents

I Background 3

II Executive Data Summary 4

III Analytical Notes 5

IV Public Hospital District Facility Listing 8

V References 13

I — Background

In 2007, the Eightieth Texas Legislature, Regular Session, passed House Bill Number 1, General Appropriations Act, Article II, Health and Human Services, Rider 59: "Report to the United States Congress on Services and Benefits Provided to Undocumented Immigrants."

This Rider requires the Texas Health and Human Services Commission (HHSC) to report the cost of services and benefits provided by HHSC to undocumented immigrants in the state. Rider 59 also requires HHSC to compile these data for each Texas public hospital district facility. The text of Rider 59 is included below, with the required data and supporting documentation on subsequent pages.

Rider 59 — Report to the United States Congress on Services and Benefits Provided to Undocumented Immigrants

The Health and Human Services Commission shall compile a report of the cost of services and benefits provided to undocumented immigrants, with the agency determining the extent to which undocumented immigrants are served by the agency, by individual program. The agency may use a statistical method developed by the agency in cases where it is not practical for the agency to directly determine whether recipients of a service or benefit are undocumented immigrants.

The Health and Human Services Commission shall also compile information on this subject from each public hospital district within the state and include this information in the report and shall not enforce Title 8 of the United States Code when compiling information on this subject.

The report must be produced using aggregated statistical data that does not contain personally identifiable information. The purpose of compiling this information is to perform analysis to assist the United States Congress and this state in making future health care and budgetary decisions. Information sought for the preparation of this report may not violate any federal or state laws, including rules, regarding privacy.

This report shall be provided to the United States Congress by December 1, 2008 and may be used as supporting materials by the State of Texas in requests for additional federal appropriations to assist with these costs.

The Health and Human Services Commission or a public hospital district may compile and report the information required by this rider only in a manner the attorney general of this state certifies as consistent with federal law.

The Health and Human Services Commission again shall submit the required report to the Lieutenant Governor, Speaker of the House of Representatives, and Members of the Legislature by December 1, 2008, and shall include the information in the agency's annual report for 2008.

II — Executive Data Summary

A. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

Estimated cost of services and benefits provided to undocumented immigrants (SFY 2007 ♦)

$81.2 million

Texas Emergency Medicaid *($80 million)* + Texas Family Violence Program *($1.2 million)*

(please see *Analytical Notes* on page 5 for subtotals and supporting documentation)

B. TEXAS PUBLIC HOSPITAL DISTRICTS

Estimated uncompensated care for undocumented immigrants (FY 2006 ♦)

$596.8 million

(please see *Analytical Notes* on page 7 for subtotals and supporting documentation)

♦ *Texas Health and Human Services Commission data are for state fiscal year 2007, the most recent data available. The Texas Public Hospital Districts data come from the Cooperative Annual Survey of Hospitals, which collects data for each facility's fiscal year. At the time of this report's publication, the most recent survey data available was for fiscal year 2006.*

III — Analytical Notes

A. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

Estimated cost of services and benefits provided to undocumented immigrants (SFY 2007)

$81.2 million

Texas Emergency Medicaid *($80 million)* + Texas Family Violence Program *($1.2 million)*

1. Texas Emergency Medicaid

Emergency Medicaid, Type Program 30 (TP 30), is a federal and state funded program that provides Medicaid coverage, limited to emergency medical conditions including childbirth and labor, for non citizens as well as undocumented immigrants living in the US. In SFY 2007, payments for Emergency Medicaid, TP 30 totaled as follows:

A — Texas Emergency Medicaid, Type Program 30, SFY 2007

Inpatient hospital	$252,300,000
Outpatient hospital	$11,200,000
Professional and other services	$53,700,000
Vendor drug	$124,500
Total	$317,324,500

Since HHSC Medicaid claims data do not conclusively identify the legal residency status of immigrants, the portion of the $317.3 million in Emergency Medicaid payments attributable to undocumented immigrants must be estimated. According to the U.S. Census Bureau's *American Community Survey* (ACS) for Texas, approximately 2.6 million non citizens resided in Texas in 2006. The Department of Homeland Security reports that 1.64 million, or 63% of these residents, were undocumented. Therefore, this brings the estimated amount paid for Emergency Medicaid services to undocumented immigrants residing in Texas to about $200 million:

B — Texas Emergency Medicaid *($317.3 million)* **x**
Estimated Percent of Non Citizens who are Undocumented Immigrants *(63%)*
= $200 million

The state shares the cost of the Medicaid program with the federal government, with Texas paying about 40% of Emergency Medicaid expenditures. Therefore, in SFY 2007 the total estimated state cost for Medicaid services to undocumented immigrants was about $80 million**.**

C — Estimated Texas Emergency Medicaid for Undocumented Immigrants
Residing in Texas *($200 million)* **x** Texas Share of Medicaid Cost *(40%)*
= $80 million

2. Texas Family Violence Program

The Texas Family Violence Program (FVP) contracts with shelters and non-residential centers across the state to provide essential services to victims of family violence. Core FVP services include shelter, 24 hour hotlines, emergency medical services, counseling, etc. In SFY 2007, FVP funded 72 nonprofit family violence shelters, 8 non-residential centers, and 19 special non-residential projects, with a total budget of $23,199,451. State general revenue accounted for nearly $16.8 million ($16,759,995) of the program's total spending for direct services.

FVP does not ask victims of family violence about their residency status. Therefore, the portion of the $16.8 million in FVP expenditures attributable to undocumented immigrants must be estimated. According to the U.S. Census Bureau's *American Community Survey* (ACS) for Texas, approximately 23.5 million individuals resided in Texas in 2006. The Department of Homeland Security reports that 1.64 million or 7% of these residents were undocumented. The total estimated state cost for direct FVP services to undocumented immigrants in SFY 2007 was:

Texas Family Violence Program budget *($16.8 million)* **x**
Estimated Number of Undocumented Texas Residents *(7%)*
= $1.2 million

B. TEXAS PUBLIC HOSPITAL DISTRICTS

Estimated uncompensated care for undocumented immigrants (FY 2006, 94 facilities*)*

$596.8 million

Limited information exists to estimate hospital-specific uncompensated care for undocumented immigrants. As such, the method adopted for this report relies on regional estimates of undocumented immigrants' share of hospital uncompensated care, applying those estimates to each hospital in the region.

The regional estimates are derived from a variety of sources. First, the software company Network Sciences created a web-based eligibility screening tool called the "Community Health and Social Services Information System" (CHASSIS™). The Indigent Care Collaboration (ICC), an alliance of safety net providers in three Central Texas counties (Travis, Williamson and Hays), employed CHASSIS™ to screen uninsured/under-insured patients for eligibility in government and local medical assistance or payment programs. This system also tracked the percent of uninsured undocumented immigrants served in these counties, and in 2005 found that nearly 14% of all patients screened in hospital settings were undocumented immigrants. (*Texas Comptroller of Public Accounts*, 2006). This figure was used as a foundation for estimating uncompensated care for undocumented immigrants in the remaining parts of Texas.

This 14% figure was then adjusted for each Public Health Region (PHR) based on information from two additional sources. The first source — the 2006 American Hospital Association/Texas Department of State Health Services/Texas Hospital Association (AHA/TDSHS/THA) *Cooperative Annual Survey of Hospitals* — is required by state law. It is submitted annually by every Texas hospital, and lists each facility's reported uncompensated care (bad debt expenses + charity care charges). The second source — claims data from the state's Emergency Medicaid, TP 30 — is available for every hospital stay for non citizens paid for by the state's Medicaid program. In emergency cases, including childbirth and labor, the federal government allows Medicaid via this program to pay for services rendered to persons who would otherwise qualify for Medicaid regardless of their immigration status.

Based on the regional distribution of uncompensated care and Emergency Medicaid expenditures, the Central Texas region's share of the state's uncompensated care appeared to be about 40% higher than its share of Emergency Medicaid. Therefore, we estimate that approximately 20% of uncompensated care statewide is accounted for by undocumented immigrants, compared to 14% in the Central Texas region reported in the aforementioned ICC study. In order to account for this difference statewide, the following formula was applied to each specific region:

Estimated Statewide Uncompensated Care Attributable To Undocumented Immigrants *(20%)* **x**
(Public Health Region's Share of State Emergency Medicaid Expenditures **/**
Public Health Region's Share of State Uncompensated Care) **=**

Estimated Percent of Uncompensated Care Attributed To Undocumented Immigrants in a Public Health Region

As expected, results varied widely by a region's demographic composition and proximity to the border, with the highest rate found in the Rio Grande Valley and the lowest rate in North Texas. The method produced approximately the same rate statewide as for the state's two largest population centers, Houston and Dallas/Fort Worth.

These region-specific values were then applied to the reported uncompensated care for each public hospital district facility to produce estimates of the uncompensated care for undocumented immigrants. These facility totals were then added to generate the state total. Please see the facility-specific listing below for more information.

IV — Public Hospital District Facility Listing

Public Hospital District Facility †	City	County	Public Health Region (PHR)	Total Facility Uncompensated Care * (A)	Estimated Percent of Uncompensated Care Attributable to Undocumented Immigrants in a PHR ‡ (B)	Estimated Uncompensated Care for Undocumented Immigrants (A * B)
Permian Regional Medical Center	Andrews	ANDREWS	9	$1,426,975	5.79	$82,622
Bellville General Hospital	Bellville	AUSTIN	6	$1,888,004	21.20	$400,257
Muleshoe Area Medical Center	Muleshoe	BAILEY	1	$891,982	6.13	$54,678
Seymour Hospital	Seymour	BAYLOR	2	$1,314,921	2.35	$30,901
University Hospital	San Antonio	BEXAR	8	$329,954,339	7.79	$25,703,443
Angleton-Danbury Medical Center	Angleton	BRAZORIA	6	$9,151,361	21.20	$1,940,089
Sweeny Community Hospital	Sweeny	BRAZORIA	6	$1,798,967	21.20	$381,381
Burleson St. Joseph Health Center	Caldwell	BURLESON	7	$2,435,567	14.35	$349,504
Plains Memorial Hospital	Dimmitt	CASTRO	1	$2,069,565	6.13	$126,864
Bayside Community Hospital	Anahuac	CHAMBERS	6	$1,094,325	21.20	$231,997
Childress Regional Medical Center	Childress	CHILDRESS	1	$2,871,587	6.13	$176,028
Cochran Memorial Hospital	Morton	COCHRAN	1	$565,121	6.13	$34,642
Coleman County Medical Center	Coleman	COLEMAN	2	$1,867,080	2.35	$43,876
Rice Medical Center	Eagle Lake	COLORADO	6	$1,424,898	21.20	$302,078
Comanche County Medical Center	Comanche	COMANCHE	2	$2,508,293	2.35	$58,945
Concho County Hospital	Eden	CONCHO	9	$263,503	5.79	$15,257
North Texas Medical Center	Gainesville	COOKE	3	$8,802,166	21.50	$1,892,466
Muenster Memorial Hospital	Muenster	COOKE	3	$417,844	21.50	$89,836
Parkland Memorial Hospital	Dallas	DALLAS	3	$626,869,092	21.50	$134,776,855
Medical Arts Hospital	Lamesa	DAWSON	9	$2,717,784	5.79	$157,360
Cuero Community Hospital	Cuero	DE WITT	8	$3,678,475	7.79	$286,553
Hereford Regional Medical Center	Hereford	DEAF SMITH	1	$3,967,904	6.13	$243,233

Public Hospital District Facility †	City	County	Public Health Region (PHR)	Total Facility Uncompensated Care * (A)	Estimated Percent of Uncompensated Care Attributable to Undocumented Immigrants in a PHR ‡ (B)	Estimated Uncompensated Care for Undocumented Immigrants (A * B)
Eastland Memorial Hospital	Eastland	EASTLAND	2	$1,745,600	2.35	$41,022
Medical Center Hospital	Odessa	ECTOR	9	$67,643,877	5.79	$3,916,580
R. E. Thomason General Hospital	El Paso	EL PASO	10	$200,673,706	18.70	$37,525,983
Fisher County Hospital District	Rotan	FISHER	2	$540,185	2.35	$12,694
W.J. Mangold Memorial Hospital	Lockney	FLOYD	1	$555,669	6.13	$34,063
Frio Regional Hospital	Pearsall	FRIO	8	$1,988,980	7.79	$154,942
Memorial Hospital	Seminole	GAINES	9	$1,358,152	5.79	$78,637
Memorial Hospital	Gonzales	GONZALES	8	$4,198,738	7.79	$327,082
Hamilton General Hospital	Hamilton	HAMILTON	7	$2,955,437	14.35	$424,105
Hansford County Hospital	Spearman	HANSFORD	1	$627,299	6.13	$38,453
Chillicothe Hospital	Chillicothe	HARDEMAN	2	$149,096	2.35	$3,504
Hardeman County Memorial Hospital	Quanah	HARDEMAN	2	$431,416	2.35	$10,138
Ben Taub General Hospital	Houston	HARRIS	6	$960,155,000	21.20	$203,552,860
Northeast Medical Center Hospital	Humble	HARRIS	6	$56,336,561	21.20	$11,943,351
Coon Memorial Hospital and Home	Dalhart	HARTLEY	1	$2,711,061	6.13	$166,188
Haskell Memorial Hospital	Haskell	HASKELL	2	$177,793	2.35	$4,178
Hemphill County Hospital	Canadian	HEMPHILL	1	$316,312	6.13	$19,390
Hopkins County Memorial Hospital	Sulphur Springs	HOPKINS	4	$7,661,397	6.94	$531,701
Presbyterian Hospital of Commerce	Commerce	HUNT	3	$1,782,289	21.50	$383,192
Presbyterian Hospital of Greenville	Greenville	HUNT	3	$23,701,017	21.50	$5,095,719
Golden Plains Community Hospital	Borger	HUTCHINSON	1	$5,964,363	6.13	$365,615
Faith Community Hospital	Jacksboro	JACK	2	$619,741	2.35	$14,564

Public Hospital District Facility †	City	County	Public Health Region (PHR)	Total Facility Uncompensated Care * (A)	Estimated Percent of Uncompensated Care Attributable to Undocumented Immigrants in a PHR ‡ (B)	Estimated Uncompensated Care for Undocumented Immigrants (A * B)
Jackson Healthcare Center	Edna	JACKSON	8	$1,688,113	7.79	$131,504
CHRISTUS Jasper Memorial Hospital	Jasper	JASPER	5	$5,814,021	4.54	$263,957
Hamlin Memorial Hospital	Hamlin	JONES	2	$216,321	2.35	$5,084
Stamford Memorial Hospital	Stamford	JONES	2	$835,599	2.35	$19,637
Otto Kaiser Memorial Hospital	Kenedy	KARNES	8	$1,488,269	7.79	$115,936
Kimble Hospital	Junction	KIMBLE	9	$862,799	5.79	$49,956
Knox County Hospital	Knox City	KNOX	2	$566,483	2.35	$13,312
Lavaca Medical Center	Hallettsville	LAVACA	8	$939,479	7.79	$73,185
Limestone Medical Center	Groesbeck	LIMESTONE	7	$1,720,727	14.35	$246,924
University Medical Center	Lubbock	LUBBOCK	1	$123,005,488	6.13	$7,540,236
Lynn County Hospital District	Tahoka	LYNN	1	$493,512	6.13	$30,252
Martin County Hospital District	Stanton	MARTIN	9	$735,801	5.79	$42,603
Matagorda General Hospital	Bay City	MATAGORDA	6	$10,756,443	21.20	$2,280,366
Heart of Texas Memorial Hospital	Brady	MCCULLOCH	9	$2,363,776	5.79	$136,863
Midland Memorial Hospital	Midland	MIDLAND	9	$40,088,376	5.79	$2,321,117
Richards Memorial Hospital	Rockdale	MILAM	7	$1,544,100	14.35	$221,578
Mitchell County Hospital	Colorado City	MITCHELL	2	$2,409,895	2.35	$56,633
Nocona General Hospital	Nocona	MONTAGUE	2	$1,058,607	2.35	$24,877
Memorial Hospital	Dumas	MOORE	1	$3,295,274	6.13	$202,000
Nacogdoches Memorial Hospital	Nacogdoches	NACOGDOCHES	5	$49,096,407	4.54	$2,228,977
Rolling Plains Memorial Hospital	Sweetwater	NOLAN	2	$3,283,504	2.35	$77,162
Ochiltree General Hospital	Perryton	OCHILTREE	1	$1,370,332	6.13	$84,001

Public Hospital District Facility †	City	County	Public Health Region (PHR)	Total Facility Uncompensated Care * (A)	Estimated Percent of Uncompensated Care Attributable to Undocumented Immigrants in a PHR ‡ (B)	Estimated Uncompensated Care for Undocumented Immigrants (A * B)
Palo Pinto General Hospital	Mineral Wells	PALO PINTO	3	$7,608,018	21.50	$1,635,724
Campbell Health System	Weatherford	PARKER	3	$17,393,965	21.50	$3,739,702
Iraan General Hospital District	Iraan	PECOS	9	$110,920	5.79	$6,422
Reagan Memorial Hospital	Big Lake	REAGAN	9	$97,206	5.79	$5,628
Reeves County Hospital	Pecos	REEVES	9	$1,717,598	5.79	$99,449
Refugio County Memorial Hospital District	Refugio	REFUGIO	11	$1,935,402	60.56	$1,172,079
Ballinger Memorial Hospital District	Ballinger	RUNNELS	2	$1,087,906	2.35	$25,566
North Runnels Hospital	Winters	RUNNELS	2	$259,451	2.35	$6,097
Sabine County Hospital	Hemphill	SABINE	5	$765,265	4.54	$34,743
Starr County Memorial Hospital	Rio Grande City	STARR	11	$3,519,126	60.56	$2,131,183
Stonewall Memorial Hospital	Aspermont	STONEWALL	2	$141,622	2.35	$3,328
Lillian M. Hudspeth Memorial Hospital	Sonora	SUTTON	9	$1,352,108	5.79	$78,287
Swisher Memorial Hospital	Tulia	SWISHER	1	$935,352	6.13	$57,337
John Peter Smith Hospital	Fort Worth	TARRANT	3	$618,729,000	21.50	$133,026,735
Brownfield Regional Medical Center	Brownfield	TERRY	1	$2,117,936	6.13	$129,829
Titus Regional Medical Center	Mount Pleasant	TITUS	4	$13,783,587	6.94	$956,581
Tyler County Hospital	Woodville	TYLER	5	$2,801,493	4.54	$127,188
McCamey Hospital	McCamey	UPTON	9	$586,995	5.79	$33,987
Rankin County Hospital District	Rankin	UPTON	9	$134,422	5.79	$7,783
Val Verde Regional Medical Center	Del Rio	VAL VERDE	8	$8,965,303	7.79	$698,397
El Campo Memorial Hospital	El Campo	WHARTON	6	$3,854,197	21.20	$817,090
Shamrock General Hospital	Shamrock	WHEELER	1	$386,101	6.13	$23,668

Public Hospital District Facility †	City	County	Public Health Region (PHR)	Total Facility Uncompensated Care * (A)	Estimated Percent of Uncompensated Care Attributable to Undocumented Immigrants in a PHR ‡ (B)	Estimated Uncompensated Care for Undocumented Immigrants (A * B)
Parkview Hospital	Wheeler	WHEELER	1	$577,427	6.13	$35,396
Electra Memorial Hospital	Electra	WICHITA	2	$1,300,014	2.35	$30,550
Wilbarger General Hospital	Vernon	WILBARGER	2	$2,687,964	2.35	$63,167
Connally Memorial Medical Center	Floresville	WILSON	8	$5,226,033	7.79	$407,108
Wise Regional Health System	Decatur	WISE	3	$15,033,103	21.50	$3,232,117
Hamilton Hospital	Olney	YOUNG	2	$3,184,195	2.35	$74,829

Total for the ninety-four Texas public hospital district facilities in FY 2006 — $596,848,958

Notes:

† The AHA/THA/TXDSHS *Cooperative Annual Survey of Hospitals* is administered to all Texas hospitals, and collects data for each facility's fiscal year. The 94 facilities listed here reported being either owned or controlled by a public hospital district on the 2006 *Cooperative Annual Survey of Hospitals*. Data for FY 2007 were not available at the time of this report's publication.

* Total facility uncompensated care is the sum of reported bad debt expenses and charity charges.

‡ Estimated percent of uncompensated care attributable to undocumented immigrants in a PHR was computed by using a formula designed for this report. Based on the regional distribution of uncompensated care and Emergency Medicaid expenditures, the Central Texas region's share of the state's uncompensated care appeared to be about 40% higher than its share of Emergency Medicaid. Therefore, we estimate that approximately 20% of uncompensated care statewide is accounted for by undocumented immigrants, compared to 14% in the Central Texas region reported in the aforementioned ICC study. In order to account for this difference statewide, the following formula was applied to each specific region. For more information, please see *Analytical Notes* on page 6.

Estimated Statewide Uncompensated Care Attributable To Undocumented Immigrants (20%) x
(Public Health Region's Share of State Emergency Medicaid Expenditures /
Public Health Region's Share of State Uncompensated Care) =
Estimated Percent of Uncompensated Care Attributed To Undocumented Immigrants in a Public Health Region

V — References

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REPORT ON SERVICES AND BENEFITS PROVIDED TO UNDOCUMENTED IMMIGRANTS

Updated report related to

Rider 59
House Bill 1
Eightieth Texas Legislature, Regular Session, 2007

— 2010 UPDATE —

Strategic Decision Support
Financial Services Division

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

Table of Contents

I Background 1

II Executive Data Summary 2

III Analytical Notes 3

IV Public Hospital District Facility Listing 8

V References 12

I – Background

The 80th Texas Legislature, Regular Session, 2007, passed House Bill 1, General Appropriations Act, Article II, Health and Human Services, Rider 59: "Report to the United States Congress on Services and Benefits Provided to Undocumented Immigrants."

This rider required the Texas Health and Human Services Commission (HHSC) to report the cost of services and benefits provided by HHSC to undocumented immigrants in the state. Rider 59 also required HHSC to compile these data for each Texas public hospital district facility. This report was originally completed in 2008. Due to numerous requests for related current information, this document is the 2010 update of that original report. The text of Rider 59 is included below, with the updated data and supporting documentation on subsequent pages.

Rider 59 — Report to the United States Congress on Services and Benefits Provided to Undocumented Immigrants

The Health and Human Services Commission shall compile a report of the cost of services and benefits provided to undocumented immigrants, with the agency determining the extent to which undocumented immigrants are served by the agency, by individual program. The agency may use a statistical method developed by the agency in cases where it is not practical for the agency to directly determine whether recipients of a service or benefit are undocumented immigrants.

The Health and Human Services Commission shall also compile information on this subject from each public hospital district within the state and include this information in the report and shall not enforce Title 8 of the United States Code when compiling information on this subject.

The report must be produced using aggregated statistical data that does not contain personally identifiable information. The purpose of compiling this information is to perform analysis to assist the United States Congress and this state in making future health care and budgetary decisions. Information sought for the preparation of this report may not violate any federal or state laws, including rules, regarding privacy.

This report shall be provided to the United States Congress by December 1, 2008, and may be used as supporting materials by the State of Texas in requests for additional federal appropriations to assist with these costs.

The Health and Human Services Commission or a public hospital district may compile and report the information required by this rider only in a manner the attorney general of this state certifies as consistent with federal law.

The Health and Human Services Commission again shall submit the required report to the Lieutenant Governor, Speaker of the House of Representatives, and Members of the Legislature by December 1, 2008, and shall include the information in the agency's annual report for 2008.

II – Executive Data Summary

A. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

Estimated cost of services and benefits provided to undocumented immigrants,
State Fiscal Year (SFY) 2009 *

$96 million

- *Note — in the original, 2008 version of this report, this figure was: $81 million.*

(Please see Analytical Notes on page 3 for subtotals and supporting documentation.)

* Texas Health and Human Services Commission data are for state fiscal year 2009, the most recent data available.

B. TEXAS PUBLIC HOSPITAL DISTRICTS

Estimated uncompensated care for undocumented immigrants, facility fiscal year 2008 *

$717 million

- *Note — in the original, 2008 version of this report, this figure was: $597 million.*

(Please see Analytical Notes on page 6 for subtotals and supporting documentation.)

* The Texas public hospital districts data come from the Cooperative Annual Survey of Hospitals, which collects data for each facility's fiscal year. At the time of this report's publication, the most recent survey data available were for fiscal year 2008.

III – Analytical Notes

A. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

Estimated cost of services and benefits provided to undocumented immigrants, SFY 2009

(1) Texas Emergency Medicaid — *$62 million* +

(2) Texas Family Violence Program — *$1.3 million* +

(3) Texas Children's Health Insurance Program (CHIP) Perinatal Coverage — *$33 million*

=

$96 million

1. Texas Emergency Medicaid

Emergency Medicaid, Type Program 30 (TP 30), is a federal and state funded program that provides Medicaid coverage, limited to emergency medical conditions including childbirth and labor, for non citizens as well as undocumented immigrants living in the US. Emergency Medicaid is a federally required program. In fiscal year 2009, payments for Emergency Medicaid, TP 30 totaled as follows:

— A —

Texas Emergency Medicaid, Type Program 30, Fiscal Year 2009

Inpatient hospital	$275,010,314
Outpatient hospital	$13,248,238
Professional and other services	$20,778,110
Vendor drug	$159,096
Total	$309,195,758

Since HHSC Medicaid claims data do not conclusively identify the legal residency status of immigrants, the portion of the $309.2 million in Emergency Medicaid payments attributable to undocumented immigrants must be estimated.

According to the U.S. Census Bureau's *American Community Survey* (ACS) for Texas, approximately 2.6 million non citizens resided in Texas in 2006. The Department of Homeland Security reports that 1.64 million, or 63 percent, of these residents were undocumented. Therefore, the estimated amount paid for Emergency Medicaid services to undocumented immigrants residing in Texas is about $194.8 million:

— B —

Texas Emergency Medicaid *($309.2 million)*

x

Estimated Percent of Non-Citizens Who Are Undocumented Immigrants *(63%)*

=

$194.8 million

The state shares the cost of the Medicaid program with the federal government, with Texas typically paying about 40 percent of Emergency Medicaid expenditures. However, in SFY 2009 due to provisions of the American Recovery and Reinvestment Act of 2009 (ARRA), the federal government temporarily increased its share of Medicaid expenditures to 68 percent, leaving the state with a 32 percent share. Therefore, the total estimated state cost for Emergency Medicaid services to undocumented immigrants residing in Texas in SFY 2009 was about $62 million**.**

— C —
Estimated Texas Emergency Medicaid for Undocumented Immigrants Residing in Texas (*$194.8 million)*
x
Texas Share of Medicaid Cost under ARRA *(32%)*
=
$62 million

➤ *Note — in the original, 2008 version of this report, this figure was: $80 million.*

2. Texas Family Violence Program

The Texas Family Violence Program (FVP) contracts with non-profit agencies in three categories (shelter centers, non-residential centers, and special non-residential projects (SNRP)) across the state to provide essential services to victims of family violence. Core FVP services include shelter, 24-hour hotlines, emergency medical services, counseling, etc. In SFY 2009, the FVP funded 72 nonprofit family violence shelters, 8 non-residential centers, and 20 SNRPs, providing comprehensive family violence services to victims, with a total budget of $24,028,440. State general revenue and Temporary Assistance for Needy Families (TANF) converted to Title XX accounted for about $19 million ($19,235,988) of the program's total spending for direct services. Services are provided without any financial eligibility testing and free of charge.

The FVP does not ask victims of family violence about their residency status. Therefore, the portion of the $19 million in FVP expenditures attributable to undocumented immigrants must be estimated. According to the U.S. Census Bureau's *American Community Survey* (ACS) for Texas, approximately 23.5 million individuals resided in Texas in 2006. The Department of Homeland Security reports that 1.64 million, or 7 percent, of these residents were undocumented. The total estimated state cost for direct FVP services to undocumented immigrants in SFY 2009 was:

Texas Family Violence Program budget *($19 million)*
x
Estimated Percent of Undocumented Immigrants in Texas *(7%)*
=
$1.3 million

➤ *Note — in the original, 2008 version of this report, this figure was: $1.2 million.*

3. Texas Children's Health Insurance Program (CHIP) Perinatal Coverage

Texas CHIP Perinatal Coverage provides prenatal care for the unborn children of low-income women. Specifically, it provides prenatal care for women living at up to 200% Federal Poverty Level (FPL) who do not otherwise qualify for Medicaid, typically due to their citizenship status. Nearly all participants of CHIP Perinatal are either documented or non-documented non-citizens. Since this program does not require citizenship documentation, there is no way to definitively report the number of undocumented immigrants served. Therefore, the portion of the $188 million in CHIP Perinatal Coverage expenditures (which represents prenatal services only) in SYF 2009 attributable to undocumented immigrants must be estimated. Note: CHIP Perinate Coverage expenditures were not included in the original Rider 59 report since, at the time its completion, a full year of program data was not available.

According to the U.S. Census Bureau's *American Community Survey* (ACS) for Texas, approximately 2.6 million non citizens resided in Texas in 2006. The Department of Homeland Security reports that 1.64 million, or 63 percent, of these residents were undocumented. Therefore, this brings the estimated amount paid for Texas CHIP Perinatal Coverage services to undocumented immigrants residing in Texas for SFY 2009 to about $118 million:

Texas CHIP Perinatal Coverage budget *($188 million)*
x
Estimated Percent of Non-Citizens Who Are Undocumented Immigrants *(63%)*
=
$118 million

The state shares the cost of the CHIP program with the federal government, with Texas typically paying about 28 percent of expenditures. Therefore, the total estimated state cost for CHIP Perinatal Coverage to undocumented immigrants residing in Texas in SFY 2009 was about $34 million**.**

Estimated CHIP Perinatal Coverage for Undocumented
Immigrants Residing in Texas (*$118 million)*
x
Texas Share of CHIP Expenditures *(28%)*
=
$33 million

- Note — *Expenditures for CHIP Perinate Coverage were not included in the original, 2008 version of the Rider 59 report since, at the time its completion, a full year of program data was not available.*

B. TEXAS PUBLIC HOSPITAL DISTRICTS

Estimated uncompensated care for undocumented immigrants (fiscal year 2008; 99 facilities)

$717 million

- *Note — in the original, 2008 version of this report, this figure was: $597 million.*

Limited information exists to estimate hospital-specific uncompensated care for undocumented immigrants. As such, the method adopted for this report relies on regional estimates of undocumented immigrants' share of hospital uncompensated care, applying those estimates to each public hospital district facility in the region.

The regional estimates (which have been rounded for this report's update) are derived from a variety of sources. First, a web-based eligibility screening tool called the "Community Health and Social Services Information System" (CHASSIS™). The Indigent Care Collaboration (ICC), an alliance of safety net providers in three Central Texas counties (Travis, Williamson and Hays), employed CHASSIS™ to screen uninsured/under-insured patients for eligibility in government and local medical assistance or payment programs (*Network Sciences, 2008*).

This system also tracked the percent of uninsured undocumented immigrants served in these counties, and in 2005 found that nearly 14 percent of all patients screened in hospital settings were undocumented immigrants. (*Texas Comptroller of Public Accounts*, 2006.) This figure was used as a foundation for estimating uncompensated care for undocumented immigrants in the remaining parts of Texas.

This 14 percent figure was adjusted for each Public Health Region (PHR) based on information from two additional sources. The first source, the 2008 American Hospital Association/Texas Department of State Health Services/Texas Hospital Association (AHA/TDSHS/THA) *Cooperative Annual Survey of Hospitals*, is required by state law. It is submitted annually by every Texas hospital and lists each facility's reported uncompensated care (bad debt expenses plus charity care charges).

The second source, claims data from the state's Emergency Medicaid Type Program (TP) 30, is available for every hospital stay for non citizens paid for by the state's Emergency Medicaid program. In emergency cases, including childbirth and labor, Medicaid pays for services rendered to persons who would otherwise qualify for Medicaid regardless of their immigration status.

Based on the regional distribution of uncompensated care and Emergency Medicaid expenditures, the Central Texas region's share of the state's uncompensated care appeared to be about 40 percent higher than its share of Emergency Medicaid. Therefore, we estimate that approximately 20 percent of uncompensated care statewide is accounted for by undocumented immigrants, compared to 14 percent in the Central Texas region reported in the aforementioned ICC study. In order to account for this difference statewide, the following formula was applied to each specific region:

Estimated Statewide Uncompensated Care Attributable To Undocumented Immigrants (20%)
x
(Public Health Region's Share of State Emergency Medicaid Expenditures /
Public Health Region's Share of State Uncompensated Care)
=
Estimated Percent of Uncompensated Care Attributed to
Undocumented Immigrants in a Public Health Region

As expected, results varied widely by a region's demographic composition and proximity to the border, with the highest rate found in the Rio Grande Valley and the lowest rate in North Texas. The method produced approximately the same rate statewide as for the state's two largest population centers, Houston and Dallas/Fort Worth.

These region-specific values were then applied to the reported uncompensated care for each public hospital district facility to produce estimates of the uncompensated care for undocumented immigrants. These facility totals were then added to generate the state total. This computational logic was revisited for the report's 2010 update, and it was determined that there was no justification to change these formulas and values at this time. Please see the facility-specific listing below for more information.

IV – Public Hospital District Facility Listing

Public Hospital District Facility †	City	County	Public Health Region (PHR)	Total Facility Uncompensated Care * (A)	Estimated Percent of Uncompensated Care Attributable to Undocumented Immigrants in a PHR ‡ (B)	Estimated Facility Uncompensated Care for Undocumented Immigrants (A x B)
Permian Regional Medical Center	Andrews	ANDREWS	9	$3,872,258	0.06	$232,335
Bellville General Hospital	Bellville	AUSTIN	6	$2,177,652	0.21	$457,307
Muleshoe Area Medical Center	Muleshoe	BAILEY	1	$812,007	0.06	$48,720
Smithville Regional Hospital	Smithville	BASTROP	7	$5,629,736	0.14	$788,163
Seymour Hospital	Seymour	BAYLOR	2	$1,025,201	0.02	$20,504
University Hospital	San Antonio	BEXAR	8	$369,227,596	0.08	$29,538,208
Angleton-Danbury Medical Center	Angleton	BRAZORIA	6	$8,240,290	0.21	$1,730,461
Sweeny Community Hospital	Sweeny	BRAZORIA	6	$2,370,787	0.21	$497,865
Burleson St. Joseph Health Center	Caldwell	BURLESON	7	$3,864,113	0.14	$540,976
Atlanta Memorial Hospital	Atlanta	CASS	4	$5,787,215	0.07	$405,105
Plains Memorial Hospital	Dimmitt	CASTRO	1	$1,761,563	0.06	$105,694
Bayside Community Hospital	Anahuac	CHAMBERS	6	$1,627,946	0.21	$341,869
Childress Regional Medical Center	Childress	CHILDRESS	1	$3,187,285	0.06	$191,237
Cochran Memorial Hospital	Morton	COCHRAN	1	$202,007	0.06	$12,120
Coleman County Medical Center	Coleman	COLEMAN	2	$2,330,626	0.02	$46,613
Rice Medical Center	Eagle Lake	COLORADO	6	$1,536,586	0.21	$322,683
Comanche County Medical Center	Comanche	COMANCHE	2	$2,112,936	0.02	$42,259
Concho County Hospital	Eden	CONCHO	9	$291,931	0.06	$17,516
North Texas Medical Center	Gainesville	COOKE	3	$10,967,036	0.22	$2,412,748
Muenster Memorial Hospital	Muenster	COOKE	3	$392,877	0.22	$86,433
Coryell Memorial Hospital	Gatesville	CORYELL	7	$3,495,557	0.14	$489,378
Parkland Memorial Hospital	Dallas	DALLAS	3	$770,172,780	0.22	$169,438,012

IV – Public Hospital District Facility Listing, Continued

Public Hospital District Facility †	City	County	Public Health Region (PHR)	Total Facility Uncompensated Care * (A)	Estimated Percent of Uncompensated Care Attributable to Undocumented Immigrants in a PHR ‡ (B)	Estimated Facility Uncompensated Care for Undocumented Immigrants (A x B)
Richardson Regional Medical Center	Richardson	DALLAS	3	$28,107,007	0.22	$6,183,542
Medical Arts Hospital	Lamesa	DAWSON	9	$4,870,046	0.06	$292,203
Cuero Community Hospital	Cuero	DE WITT	8	$4,732,916	0.08	$378,633
Hereford Regional Medical Center	Hereford	DEAF SMITH	1	$5,343,007	0.06	$320,580
Eastland Memorial Hospital	Eastland	EASTLAND	2	$3,356,919	0.02	$67,138
Medical Center Hospital	Odessa	ECTOR	9	$74,028,538	0.06	$4,441,712
R. E. Thomason General Hospital	El Paso	EL PASO	10	$212,073,041	0.19	$40,293,878
Fisher County Hospital District	Rotan	FISHER	2	$537,418	0.02	$10,748
W.J. Mangold Memorial Hospital	Lockney	FLOYD	1	$903,277	0.06	$54,197
OakBend Medical Center	Richmond	FORT BEND	6	$26,351,512	0.21	$5,533,818
Frio Regional Hospital	Pearsall	FRIO	8	$2,063,071	0.08	$165,046
Memorial Hospital	Seminole	GAINES	9	$2,287,318	0.06	$137,239
Memorial Hospital	Gonzales	GONZALES	8	$4,260,810	0.08	$340,865
Hamilton General Hospital	Hamilton	HAMILTON	7	$4,433,680	0.14	$620,715
Hansford County Hospital	Spearman	HANSFORD	1	$718,184	0.06	$43,091
Hardeman County Memorial Hospital	Quanah	HARDEMAN	2	$512,530	0.02	$10,251
Chillicothe Hospital	Chillicothe	HARDEMAN	2	$190,958	0.02	$3,819
Ben Taub General Hospital	Houston	HARRIS	6	$1,107,257,370	0.21	$232,524,048
Tomball Regional Hospital	Tomball	HARRIS	6	$34,205,413	0.21	$7,183,137
Coon Memorial Hospital and Home	Dalhart	HARTLEY	1	$2,517,976	0.06	$151,079
Haskell Memorial Hospital	Haskell	HASKELL	2	$270,676	0.02	$5,414
Hemphill County Hospital	Canadian	HEMPHILL	1	$608,103	0.06	$36,486

IV – Public Hospital District Facility Listing, Continued

Public Hospital District Facility †	City	County	Public Health Region (PHR)	Total Facility Uncompensated Care * (A)	Estimated Percent of Uncompensated Care Attributable to Undocumented Immigrants in a PHR ‡ (B)	Estimated Facility Uncompensated Care for Undocumented Immigrants (A x B)
Hopkins County Memorial Hospital	Sulphur Springs	HOPKINS	4	$8,855,915	0.07	$619,914
Hunt Regional Medical Center Greenville	Greenville	HUNT	3	$26,569,309	0.22	$5,845,248
Hunt Regional Community Hospital	Commerce	HUNT	3	$1,949,784	0.22	$428,952
Faith Community Hospital	Jacksboro	JACK	2	$1,336,009	0.02	$26,720
Jackson Healthcare Center	Edna	JACKSON	8	$1,511,280	0.08	$120,902
CHRISTUS Jasper Memorial Hospital	Jasper	JASPER	5	$8,386,654	0.05	$419,333
Stamford Memorial Hospital	Stamford	JONES	2	$1,263,715	0.02	$25,274
Hamlin Memorial Hospital	Hamlin	JONES	2	$118,858	0.02	$2,377
Otto Kaiser Memorial Hospital	Kenedy	KARNES	8	$1,956,818	0.08	$156,545
Knox County Hospital	Knox City	KNOX	2	$864,961	0.02	$17,299
Lavaca Medical Center	Hallettsville	LAVACA	8	$1,049,510	0.08	$83,961
Limestone Medical Center	Groesbeck	LIMESTONE	7	$2,966,202	0.14	$415,268
Llano Memorial Hospital	Llano	LLANO	7	$6,430,811	0.14	$900,314
University Medical Center	Lubbock	LUBBOCK	1	$116,021,682	0.06	$6,961,301
Lynn County Hospital District	Tahoka	LYNN	1	$485,660	0.06	$29,140
Martin County Hospital District	Stanton	MARTIN	9	$1,422,335	0.06	$85,340
Matagorda Medical Center	Bay City	MATAGORDA	6	$10,322,312	0.21	$2,167,686
Heart of Texas Memorial Hospital	Brady	MCCULLOCH	9	$2,354,023	0.06	$141,241
Medina Community Hospital	Hondo	MEDINA	8	$4,391,528	0.08	$351,322
Midland Memorial Hospital	Midland	MIDLAND	9	$48,655,866	0.06	$2,919,352
Mitchell County Hospital	Colorado City	MITCHELL	2	$3,674,336	0.02	$73,487
Bowie Memorial Hospital	Bowie	MONTAGUE	2	$3,216,286	0.02	$64,326

Public Hospital District Facility †	City	County	Public Health Region (PHR)	Total Facility Uncompensated Care * (A)	Estimated Percent of Uncompensated Care Attributable to Undocumented Immigrants in a PHR ‡ (B)	Estimated Facility Uncompensated Care for Undocumented Immigrants (A x B)
Nocona General Hospital	Nocona	MONTAGUE	2	$1,531,908	0.02	$30,638
Memorial Hospital	Dumas	MOORE	1	$3,725,461	0.06	$223,528
Nacogdoches Memorial Hospital	Nacogdoches	NACOGDOCHES	5	$54,003,977	0.05	$2,700,199
Rolling Plains Memorial Hospital	Sweetwater	NOLAN	2	$4,232,138	0.02	$84,643
Ochiltree General Hospital	Perryton	OCHILTREE	1	$1,777,167	0.06	$106,630
Palo Pinto General Hospital	Mineral Wells	PALO PINTO	3	$6,269,909	0.22	$1,379,380
Iraan General Hospital	Iraan	PECOS	9	$373,544	0.06	$22,413
Reagan Memorial Hospital	Big Lake	REAGAN	9	$222,237	0.06	$13,334
Reeves County Hospital	Pecos	REEVES	9	$2,637,636	0.06	$158,258
Refugio County Memorial Hospital District	Refugio	REFUGIO	11	$1,866,730	0.61	$1,138,705
Ballinger Memorial Hospital District	Ballinger	RUNNELS	2	$750,577	0.02	$15,012
North Runnels Hospital	Winters	RUNNELS	2	$290,514	0.02	$5,810
Cogdell Memorial Hospital	Snyder	SCURRY	2	$7,086,091	0.02	$141,722
Starr County Memorial Hospital	Rio Grande City	STARR	11	$3,075,916	0.61	$1,876,309
Stonewall Memorial Hospital	Aspermont	STONEWALL	2	$108,093	0.02	$2,162
Lillian M. Hudspeth Memorial Hospital	Sonora	SUTTON	9	$1,838,340	0.06	$110,300
Swisher Memorial Hospital	Tulia	SWISHER	1	$1,036,407	0.06	$62,184
John Peter Smith Hospital	Fort Worth	TARRANT	3	$773,861,000	0.22	$170,249,420
Brownfield Regional Medical Center	Brownfield	TERRY	1	$2,479,007	0.06	$148,740
Titus Regional Medical Center	Mount Pleasant	TITUS	4	$18,528,136	0.07	$1,296,970
Tyler County Hospital	Woodville	TYLER	5	$3,472,921	0.05	$173,646
Rankin County Hospital District	Rankin	UPTON	9	$193,275	0.06	$11,597

IV – Public Hospital District Facility Listing, Continued

Public Hospital District Facility †	City	County	Public Health Region (PHR)	Total Facility Uncompensated Care * (A)	Estimated Percent of Uncompensated Care Attributable to Undocumented Immigrants in a PHR ‡ (B)	Estimated Facility Uncompensated Care for Undocumented Immigrants (A x B)
McCamey Hospital	McCamey	UPTON	9	$55,186	0.06	$3,311
Uvalde Memorial Hospital	Uvalde	UVALDE	8	$8,347,207	0.08	$667,777
Val Verde Regional Medical Center	Del Rio	VAL VERDE	8	$10,632,139	0.08	$850,571
El Campo Memorial Hospital	El Campo	WHARTON	6	$3,507,501	0.21	$736,575
Shamrock General Hospital	Shamrock	WHEELER	1	$641,535	0.06	$38,492
Parkview Hospital	Wheeler	WHEELER	1	$450,335	0.06	$27,020
Electra Memorial Hospital	Electra	WICHITA	2	$1,366,414	0.02	$27,328
Wilbarger General Hospital	Vernon	WILBARGER	2	$3,562,302	0.02	$71,246
Connally Memorial Medical Center	Floresville	WILSON	8	$5,615,212	0.08	$449,217
Wise Regional Health System	Decatur	WISE	3	$25,177,926	0.22	$5,539,144
Hamilton Hospital	Olney	YOUNG	2	$2,004,045	0.02	$40,081

Total for the ninety-nine Texas public hospital district facilities in FY 2008 — ***$716,821,507***

Notes:

† The AHA/THA/TDSHS *Cooperative Annual Survey of Hospitals* is administered to all Texas hospitals, and collects data for each facility's fiscal year. The 99 facilities listed here reported being either owned or controlled by a public hospital district on the 2008 *Cooperative Annual Survey of Hospitals*. Data for FY 2009 were not available at the time of this report's publication.

* Total facility uncompensated care is the sum of reported bad debt expenses and charity charges.

‡ Estimated percent of uncompensated care attributable to undocumented immigrants in a PHR was computed by using a formula designed for this report's original 2008 edition, and retained for this 2010 update. Based on the regional distribution of uncompensated care and Emergency Medicaid expenditures, the Central Texas region's share of the state's uncompensated care appeared to be about 40% higher than its share of Emergency Medicaid. Therefore, we estimate that approximately 20% of uncompensated care statewide is accounted for by undocumented immigrants, compared to 14% in the Central Texas region reported in the aforementioned ICC study. In order to account for this difference statewide, the following formula was applied to each specific region. For more information, please see *Analytical Notes* on page 6.

Estimated Statewide Uncompensated Care Attributable To Undocumented Immigrants (20%) x
(Public Health Region's Share of State Emergency Medicaid Expenditures /
Public Health Region's Share of State Uncompensated Care) =
Estimated Percent of Uncompensated Care Attributed To Undocumented Immigrants in a Public Health Region

V – References

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REPORT ON TEXAS HEALTH AND HUMAN SERVICES COMMISSION SERVICES AND BENEFITS PROVIDED TO UNDOCUMENTED IMMIGRANTS

Update to the Report Required by the

2008-09 General Appropriations Act,
H.B. 1, 80th Legislature, Regular Session, 2007
(Article II, Health and Human Services Commission, Rider 59)

FEBRUARY 2013 UPDATE

Strategic Decision Support
Financial Services Division
TEXAS HEALTH AND HUMAN SERVICES COMMISSION

Table of Contents

I Background 3

II Executive Data Summary 4

III Analytical Notes 5

IV References 9

I – Background

The 2008-09 General Appropriations Act, H.B. 1, 80th Legislature, Regular Session, 2007 (Article II, Health and Human Services Commission, Rider 59) required the Texas Health and Human Services Commission (HHSC) to report the cost of services and benefits provided by HHSC to undocumented immigrants in the state. Rider 59 also required HHSC to compile these data for each Texas public hospital district facility. This report was originally completed in 2008. Due to numerous requests for related current information, the report was updated in 2010. This report is the second update to that original report. The text of Rider 59 is included below, with the updated data and supporting documentation on subsequent pages.

Rider 59 — Report to the United States Congress on Services and Benefits Provided to Undocumented Immigrants

The Health and Human Services Commission shall compile a report of the cost of services and benefits provided to undocumented immigrants, with the agency determining the extent to which undocumented immigrants are served by the agency, by individual program. The agency may use a statistical method developed by the agency in cases where it is not practical for the agency to directly determine whether recipients of a service or benefit are undocumented immigrants.

The Health and Human Services Commission shall also compile information on this subject from each public hospital district within the state and include this information in the report and shall not enforce Title 8 of the United States Code when compiling information on this subject.

The report must be produced using aggregated statistical data that does not contain personally identifiable information. The purpose of compiling this information is to perform analysis to assist the United States Congress and this state in making future health care and budgetary decisions. Information sought for the preparation of this report may not violate any federal or state laws, including rules, regarding privacy.

This report shall be provided to the United States Congress by December 1, 2008, and may be used as supporting materials by the State of Texas in requests for additional federal appropriations to assist with these costs.

The Health and Human Services Commission or a public hospital district may compile and report the information required by this rider only in a manner the attorney general of this state certifies as consistent with federal law.

The Health and Human Services Commission again shall submit the required report to the Lieutenant Governor, Speaker of the House of Representatives, and Members of the Legislature by December 1, 2008, and shall include the information in the agency's annual report for 2008.

II – Executive Data Summary

TEXAS HEALTH AND HUMAN SERVICES COMMISSION SERVICES AND BENEFITS PROVIDED TO UNDOCUMENTED IMMIGRANTS

Estimated cost of services and benefits provided to undocumented immigrants in fiscal year ***(FY) 2011****:*

(1) Texas Emergency Medicaid — *$71million*

+

(2) Texas Family Violence Program (FVP) — *$1.28 million*

+

(3) Texas Children's Health Insurance Program (CHIP) Perinatal Coverage — *$35 million*

=

$107 million

Comparison of Estimates in Previous Reports and Current Estimate

	FY 2007	FY 2009	FY 2011
(1) Texas Emergency Medicaid	$ 80 million	$ 62 million	$ 71 million
(2) Texas Family Violence Program (FVP)	$1.2 million	$1.3 million	$1.28 million
(3) Texas Children's Health Insurance Program (CHIP) Perinatal Coverage	N/A*	$ 33 million	$ 35 million
TOTAL TEXAS HEALTH AND HUMAN SERVICES COMMISSION	**$ 81.2 million**	**$ 96 million**	**$ 107 million**

** Expenditures for CHIP Perinatal Coverage were not included in the original 2008 Rider 59 report since, at the time of its completion, a full year of program data was not available.*

III – Analytical Notes

1. Texas Emergency Medicaid

Emergency Medicaid, Type Program 30 (TP 30), is a federal and state funded program that provides Medicaid coverage, limited to emergency medical conditions including childbirth and labor to non-citizens including undocumented immigrants, living in the United States. Emergency Medicaid is a federally required program.

Three steps are necessary to estimate the cost of services and benefits that HHSC provided to undocumented immigrants: A) Determine total Emergency Medicaid (TP 30) expenditures during fiscal year 2011; B) Estimate the fraction of undocumented non-citizens during this timeframe and amounts expended on this population; and C) Calculate the state share of TP 30 expenditures for the undocumented population.

During fiscal year 2011 payments for Emergency Medicaid, TP 30, were as follows:

— A —

Texas Emergency Medicaid, Type Program 30, Fiscal Year 2011

Inpatient hospital	*$299,203,323*
Outpatient hospital	*$24,845,002*
Professional and other services	*$16,591,397*
Vendor drug	*$93,345*
(A) Total	**$340,733,067**

Since HHSC Medicaid claims data do not conclusively identify the legal residency status of immigrants, the portion of the $340.7 million in Emergency Medicaid payments attributable to undocumented immigrants must be estimated.

According to the U.S. Census Bureau's *American Community Survey* (ACS) for Texas, approximately 2.83 million non-citizens resided in Texas in 2011. The Department of Homeland Security reports that 1.79 million, or 63 percent, of these residents were undocumented. Therefore, the estimated amount paid for Emergency Medicaid services to undocumented immigrants residing in Texas is about $215 million:

— B —

(A) Texas Emergency Medicaid *($341 million)*
x
Estimated Percent of Non-Citizens Who Are Undocumented Immigrants *(63%)*
=
(B_1) $215 million

The state shares the cost of the Medicaid program with the federal government, with Texas typically paying about 40 percent of Emergency Medicaid expenditures. However, in fiscal year 2009, due to provisions of the American Recovery and Reinvestment Act of 2009 (ARRA), the federal government temporarily increased its share of Medicaid expenditures to 68 percent, leaving the state with a 32 percent share. In fiscal year 2011, Texas' share of Medicaid expenditures increased to 33 percent **(B_2)**. Therefore, the total estimated state cost for Emergency Medicaid services provided to undocumented immigrants residing in Texas in fiscal year 2011was about $71 million**.**

— C —

(B_1) Estimated Texas Emergency Medicaid for Undocumented Immigrants Residing in Texas (*$215 million)*
x
(B_2) Texas Share of Medicaid Cost under ARRA *(33%)*
=
$71 million

Comparison of Estimates in Previous Reports and Current Estimate

	FY 2007	**FY 2009**	**FY 2011**
Inpatient hospital	$252,300,000	$275,010,314	$299,203,323
Outpatient hospital	$11,200,000	$13,248,238	$24,845,002
Professional and other services	$53,700,000	$20,778,110	$16,591,396
Vendor Drug	$124,500	$159,096	$93,345
(A) Sum of Expenditures	$317,324,500	$309,195,758	$340,733,067
(B_1) Estimated amount paid for services to undocumented immigrants	$ 200 million	$ 194.8 million	$ 215 million
(B_2) Texas' share of TP 30 expenditures	40%	32%	33%
(C) TEXAS' SHARE OF EXPENDITURES	**$ 80 million**	**$ 62 million**	**$ 71 million**

2. Texas Family Violence Program

The Texas Family Violence Program (FVP) contracts with non-profit agencies in three categories (shelter centers, non-residential centers, and special non-residential projects [SNRPs]) across the state to provide essential services to victims of family violence. Core FVP services include shelter, 24-hour hotlines, emergency medical services, counseling, etc. In fiscal year 2011, the FVP funded 70 non-profit family violence shelters, 10 non-residential centers, and 16 SNRPs, providing comprehensive family violence services to victims, with a total budget of $23,682,177. State general revenue and Temporary Assistance for Needy Families (TANF) converted to Title XX accounted for about $18 million ($18,281,411) of the program's total spending for direct services. Services are provided without any financial eligibility testing and are free of charge.

The FVP does not ask victims of family violence about their residency status. Therefore, the portion of the $18 million in FVP expenditures attributable to undocumented immigrants must be estimated. According to the U.S. Census Bureau's *American Community Survey* (ACS) for Texas, approximately 25.7 million individuals resided in Texas in 2011. The Department of Homeland Security reports that 1.79 million, or 7 percent, of these residents were undocumented. The total estimated state cost for direct FVP services to undocumented immigrants in fiscal year 2011 was:

Texas Family Violence Program budget *($18 million)*
x
Estimated Percent of Undocumented Immigrants in Texas *(7%)*
=
$1.28 million

Comparison of Estimates in Previous Reports and Current Estimate

	SFY 2007	SFY 2009	SFY 2011
Texas Family Violence Program budget	$ 16.8 million	$ 19 million	$ 18 million
ESTIMATED COSTS FOR DIRECT FVP SERVICES TO UNDOCUMENTED IMMIGRANTS	**$1.2 million**	**$1.3 million**	**$1.28 million**

III – Analytical Notes (*Continued*)

3. Texas Children's Health Insurance Program (CHIP) Perinatal Coverage

Texas CHIP Perinatal Coverage provides prenatal care to low-income women living at up to 200% of the Federal Poverty Level (FPL) who do not otherwise qualify for Medicaid, typically due to their citizenship status. Nearly all CHIP Perinatal Coverage enrollees are either documented or undocumented non-citizens. Since this program does not require citizenship documentation, there is no way to definitively report the number of undocumented immigrants served. Therefore, the portion of the $201 million in CHIP Perinatal Coverage expenditures (which represents prenatal services only) in fiscal year 2011 attributable to undocumented immigrants must be estimated. Note: CHIP Perinatal Coverage expenditures were not included in the original Rider 59 report since, at the time of its completion, a full year of program data was not available.

According to the U.S. Census Bureau's *American Community Survey* (ACS) for Texas, approximately 2.83 million non-citizens resided in Texas in 2011. The Department of Homeland Security reports that 1.79 million, or 63 percent, of these residents were undocumented. Therefore, this brings the estimated amount paid for Texas CHIP Perinatal Coverage services to undocumented immigrants residing in Texas for fiscal year 2011 to about $127 million:

Texas CHIP Perinatal Coverage budget *($201 million)*
x
Estimated Percent of Non-Citizens Who Are Undocumented Immigrants *(63%)*
=
$127 million

The state shares the cost of the CHIP program with the federal government. Texas typically pays about 28 percent of expenditures. Therefore, the total estimated state cost for CHIP Perinatal Coverage to undocumented immigrants residing in Texas in fiscal year 2011 was about $35 million**.**

Estimated CHIP Perinatal Coverage for Undocumented
Immigrants Residing in Texas (*$127 million)*
x
Texas Share of CHIP Expenditures *(28%)*
=
$35 million

Comparison of Estimates in Previous Reports and Current Estimate

	FY 2007	FY 2009	FY 2011
Texas CHIP Perinatal Coverage budget	*	$ 188 million	$ 201 million
Estimated amount paid for services to undocumented immigrants	*	$ 118 million	$ 127 million
Texas' share of the expenditures	*****	**$ 33 million**	**$ 35 million**

** Expenditures for CHIP Perinatal Coverage were not included in the original 2008 Rider 59 report since, at the time of its completion, a full year of program data was not available.*

IV – References

The 2008-09 General Appropriations Act, H.B. 1, 80th Legislature, Regular Session, 2007 (Article II, Health and Human Services Commission, Rider 59).

Texas Comptroller of Public Accounts, 2006. *Special Report: Undocumented Immigrants in Texas, A Financial Analysis of the Impact to the State Budget and Economy*. Publication #96-1224. Retrieved September 6, 2008, from http://www.window.state.tx.us/specialrpt/undocumented/undocumented.pdf.

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U.S. Department of Homeland Security. *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011*. Retrieved from:
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REPORT ON TEXAS HEALTH AND HUMAN SERVICES COMMISSION SERVICES AND BENEFITS PROVIDED TO UNDOCUMENTED IMMIGRANTS

Update to the Report Required by the

2008-09 General Appropriations Act,
H.B. 1, 80th Legislature, Regular Session, 2007
(Article II, Health and Human Services Commission, Rider 59)

DECEMBER 2014 UPDATE

Strategic Decision Support
Financial Services Division
TEXAS HEALTH AND HUMAN SERVICES COMMISSION

Table of Contents

I	Background	3
II	Executive Data Summary	4
III	Analytical Notes	5
IV	References	9

I – Background

The 2008-09 General Appropriations Act, H.B. 1, 80th Legislature, Regular Session, 2007 (Article II, Health and Human Services Commission, Rider 59) required the Texas Health and Human Services Commission (HHSC) to report the cost of services and benefits provided by HHSC to undocumented immigrants in the state. This report was originally completed in 2008. Due to numerous requests for related current information, the report was updated in 2010 and 2012. This report is the third update to the original report. The text of Rider 59 is included below, with the updated data and supporting documentation on subsequent pages.

Rider 59 — Report to the United States Congress on Services and Benefits Provided to Undocumented Immigrants

The Health and Human Services Commission shall compile a report of the cost of services and benefits provided to undocumented immigrants, with the agency determining the extent to which undocumented immigrants are served by the agency, by individual program. The agency may use a statistical method developed by the agency in cases where it is not practical for the agency to directly determine whether recipients of a service or benefit are undocumented immigrants.

The Health and Human Services Commission shall also compile information on this subject from each public hospital district within the state and include this information in the report and shall not enforce Title 8 of the United States Code when compiling information on this subject.

The report must be produced using aggregated statistical data that does not contain personally identifiable information. The purpose of compiling this information is to perform analysis to assist the United States Congress and this state in making future health care and budgetary decisions. Information sought for the preparation of this report may not violate any federal or state laws, including rules, regarding privacy.

This report shall be provided to the United States Congress by December 1, 2008, and may be used as supporting materials by the State of Texas in requests for additional federal appropriations to assist with these costs.

The Health and Human Services Commission or a public hospital district may compile and report the information required by this rider only in a manner the attorney general of this state certifies as consistent with federal law.

The Health and Human Services Commission again shall submit the required report to the Lieutenant Governor, Speaker of the House of Representatives, and Members of the Legislature by December 1, 2008, and shall include the information in the agency's annual report for 2008.

II – Executive Data Summary

TEXAS HEALTH AND HUMAN SERVICES COMMISSION SERVICES AND BENEFITS PROVIDED TO UNDOCUMENTED IMMIGRANTS

*Estimated cost of services and benefits provided to undocumented immigrants in fiscal year **(FY) 2013**:*

(1) Texas Emergency Medicaid — *$90 million*

+

(2) Texas Family Violence Program (FVP) — *$1.4 million*

+

(3) Texas Children's Health Insurance Program (CHIP) Perinatal Coverage — *$38 million*

=

$129 million

Comparison of Estimates in Previous Reports and Current Estimate				
	FY 2007	**FY 2009**	**FY 2011**	**FY 2013**
(1) Texas Emergency Medicaid	$ 80 million	$ 62 million	$ 71 million	$ 90 million
(2) Texas Family Violence Program (FVP)	$1.2 million	$1.3 million	$1.3 million	$1.4 million
(3) Texas Children's Health Insurance Program (CHIP) Perinatal Coverage	N/A*	$ 33 million	$ 35 million	$ 38 million
TOTAL TEXAS HEALTH AND HUMAN SERVICES COMMISSION	**$ 81 million**	**$ 96 million**	**$ 107 million**	**$ 129 million**

** Expenditures for CHIP Perinatal Coverage were not included in the original 2008 Rider 59 report since, at the time of its completion, a full year of program data was not available.*

III – Analytical Notes

1. Texas Emergency Medicaid

Emergency Medicaid, Type Program 30 (TP 30), is a federal and state funded program that provides Medicaid coverage, limited to emergency medical conditions including childbirth and labor to non-citizens including undocumented immigrants, living in the United States. Emergency Medicaid is a federally required program.

Three steps are necessary to estimate the cost of services and benefits that HHSC provided to undocumented immigrants: A) Determine total Emergency Medicaid (TP 30) expenditures during fiscal year 2013; B) Estimate the fraction of undocumented non-citizens during this timeframe and amounts expended on this population; and C) Calculate the state share of TP 30 expenditures for the undocumented population.

During fiscal year 2013 payments for Emergency Medicaid, TP 30, were as follows:

— A —

Texas Emergency Medicaid, Type Program 30, Fiscal Year 2013

Inpatient hospital	*$299,447,148*
Outpatient hospital	*$26,084,046*
Professional and other services	*$19,043,497*
Vendor drug	*$97,954*
(A) Total	**$337,672,645**

Since HHSC Medicaid claims data do not conclusively identify the legal residency status of immigrants, the portion of the $337.7 million in Emergency Medicaid payments attributable to undocumented immigrants must be estimated.

According to the U.S. Census Bureau's *American Community Survey* (ACS) for Texas, approximately 2.87 million non-citizens resided in Texas in 2013. HHSC Strategic Decision Support estimates based on 2012 Department of Homeland Security reports, that in 2013 1.88 million, or 65.5 percent, of these residents were undocumented. Therefore, the estimated amount paid for Emergency Medicaid services to undocumented immigrants residing in Texas is about $221 million:

— B —

(A) Texas Emergency Medicaid *($337.7 million)*
x
Estimated Percent of Non-Citizens Who Are Undocumented Immigrants *(65.5%)*
=
(B_1) $221 million

The state shares the cost of the Medicaid program with the federal government, with Texas typically paying about 40 percent of Emergency Medicaid expenditures. However, in fiscal year 2009, due to provisions of the American Recovery and Reinvestment Act of 2009 (ARRA), the federal government temporarily increased its share of Medicaid expenditures to 68 percent, leaving the state with a 32 percent share. In fiscal year 2011, Texas' share of Medicaid expenditures increased to 33 percent. Texas' share for 2013 increased to pre ARRA levels (to approximately 41%) in 2013 **(B_2)**. Therefore, the total estimated state cost for Emergency Medicaid services provided to undocumented immigrants residing in Texas in fiscal year 2013 was about $90 million**.**

— C —

(B_1) Estimated Texas Emergency Medicaid for Undocumented Immigrants Residing in Texas *($221 million)*
x
(B_2) Texas Share of Medicaid Cost *(40.79%)*
=
$90 million

Comparison of Estimates in Previous Reports and Current Estimate				
	FY 2007	**FY 2009**	**FY 2011**	**FY 2013**
Inpatient hospital	$252,300,000	$275,010,314	$299,203,323	$299,447,148
Outpatient hospital	$11,200,000	$13,248,238	$24,845,002	$26,084,046
Professional and other services	$53,700,000	$20,778,110	$16,591,396	$19,043,497
Vendor Drug	$124,500	$159,096	$93,345	$97,954
(A) Sum of Expenditures	$317,324,500	$309,195,758	$340,733,067	$337,672,645
(B_1) Estimated amount paid for services to undocumented immigrants	$ 200 million	$ 195 million	$ 215 million	$ 221 million
(B_2) Texas' share of TP 30 expenditures*	39.23%	31.74%	32.68%	40.79%
(C) TEXAS' SHARE OF EXPENDITURES	**$ 80 million**	**$ 62 million**	**$ 71 million**	**$ 90 million**

*FY 2009 and 2011 represent years for which the Federal ARRA program reduced Texas' share of CHIP payments.

2. Texas Family Violence Program

The Texas Family Violence Program (FVP) contracts with non-profit agencies in three categories (shelter centers, non-residential centers, and Special Nonresidential Projects [SNRPs]) across the state to provide essential services to victims of family violence. Core FVP services include shelter, 24-hour hotlines, emergency medical services, counseling, etc. In fiscal year 2013, the FVP funded 70 non-profit family violence shelters, 10 non-residential centers, and 16 SNRPs, providing comprehensive family violence services to victims, with a total budget of $25,484,083. State general revenue and Temporary Assistance for Needy Families (TANF) converted to Title XX accounted for about $20 million ($20,139,326) of the program's total spending for direct services. Services are provided without any financial eligibility testing and are free of charge.

The FVP does not ask victims of family violence about their residency status. Therefore, the portion of the $20 million in FVP expenditures attributable to undocumented immigrants must be estimated. According to the U.S. Census Bureau's *American Community Survey* (ACS) for Texas, approximately 26.4 million individuals resided in Texas in 2013. HHSC Strategic Decision Support estimates based on 2012 Department of Homeland Security reports, that in 2013 1.88, or 7.1 percent, of these residents were undocumented. The total estimated state cost for direct FVP services to undocumented immigrants in fiscal year 2013 was:

Texas Family Violence Program budget *($20 million)*

x

Estimated Percent of Undocumented Immigrants in Texas *(7.1%)*

=

$1.4 million

Comparison of Estimates in Previous Reports and Current Estimate				
	SFY 2007	**SFY 2009**	**SFY 2011**	**SFY 2013**
Texas Family Violence Program budget	$ 17 million	$ 19 million	$ 18 million	$ 20 million
ESTIMATED COSTS FOR DIRECT FVP SERVICES TO UNDOCUMENTED IMMIGRANTS	**$1.2 million**	**$1.3 million**	**$1.3 million**	**$1.4 million**

3. Texas Children's Health Insurance Program (CHIP) Perinatal Coverage

Texas CHIP Perinatal Coverage provides prenatal care to low-income women living at up to 200% of the Federal Poverty Level (FPL) who do not otherwise qualify for Medicaid, typically due to their citizenship status. Nearly all CHIP Perinatal Coverage enrollees are either documented or undocumented non-citizens. Since this program does not require citizenship documentation, there is no way to definitively report the number of undocumented immigrants served. Therefore, the portion of the $204 million in CHIP Perinatal Coverage expenditures (which represents prenatal services only) in fiscal year 2013 attributable to undocumented immigrants must be estimated. Note: CHIP Perinatal Coverage expenditures were not included in the original Rider 59 report since, at the time of its completion, a full year of program data was not available.

According to the U.S. Census Bureau's *American Community Survey* (ACS) for Texas, approximately 2.87 million non-citizens resided in Texas in 2013. HHSC Strategic Decision Support estimates based on 2012 Department of Homeland Security reports, that in 2013 1.88, or 65.5 percent, of these residents were undocumented. Therefore, this brings the estimated amount paid for Texas CHIP Perinatal Coverage services to undocumented immigrants residing in Texas for fiscal year 2013 to about $134 million:

Texas CHIP Perinatal Coverage Expenditures *($204 million)*
x
Estimated Percent of Non-Citizens Who Are Undocumented Immigrants *(65.5%)*
=
$134 million

The state shares the cost of the CHIP program with the federal government. Texas typically pays about 28.5 percent of expenditures. Therefore, the total estimated state cost for CHIP Perinatal Coverage to undocumented immigrants residing in Texas in fiscal year 2013 was about $38 million.

Estimated CHIP Perinatal Coverage for Undocumented
Immigrants Residing in Texas (*$134 million)*
x
Texas Share of CHIP Expenditures *(28.5%)*
=
$38 million

Comparison of Estimates in Previous Reports and Current Estimate				
	FY 2007	**FY 2009**	**FY 2011**	**FY 2013**
Texas CHIP Perinatal Coverage expenditures	*	$ 188 million	$ 201 million	$ 204 million
Estimated amount paid for services to undocumented immigrants	*	$ 118 million	$ 127 million	$ 134 million
Texas' share of the expenditures	*	**$ 33 million**	**$ 35 million**	**$ 38 million**

** Expenditures for CHIP Perinatal Coverage were not included in the original 2008 Rider 59 report since, at the time of its completion, a full year of program data was not available.*

IV – References

The 2008-09 General Appropriations Act, H.B. 1, 80th Legislature, Regular Session, 2007 (Article II, Health and Human Services Commission, Rider 59).

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Report on Texas Health and Human Services Commission Services and Benefits Provided to Undocumented Immigrants

Update to the Report Required by Rider 59, H. B. 1, 80th Legislature, Regular Session, 2007

Center for Analytics and Decision Support ◆ Policy and Performance Division

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

March 2017

Table of Contents

I Background 3

II Executive Data Summary 4

III Analytical Notes..5

IV References 10

I – Background

As required by the 2008-09 General Appropriations Act, H.B. 1, 80th Legislature, Regular Session, 2007 (Article II, Health and Human Services Commission, Rider 59) required the Texas Health and Human Services Commission (HHSC) to prepare a report indicating the cost of services and benefits provided by HHSC to undocumented immigrants in the state. This report was originally completed in 2008. Due to numerous requests for related current information, the report was updated in each subsequent biennium. This report is the fourth update to the original report. The text of Rider 59 is included below, with the updated data and supporting documentation on subsequent pages.

Rider 59 — Report to the United States Congress on
Services and Benefits Provided to Undocumented Immigrants

The Health and Human Services Commission shall compile a report of the cost of services and benefits provided to undocumented immigrants, with the agency determining the extent to which undocumented immigrants are served by the agency and by individual program. The agency may use a statistical method developed by the agency in cases where it is not practical for the agency to directly determine whether recipients of a service or benefit are undocumented immigrants.

The Health and Human Services Commission shall also compile information on this subject from each public hospital district within the state and include this information in the report and shall not enforce Title 8 of the United States Code when compiling information on this subject.

The report must be produced using aggregated statistical data that does not contain personally identifiable information. The purpose of compiling this information is to perform analysis to assist the United States Congress and this state in making future health care and budgetary decisions. Information sought for the preparation of this report may not violate any federal or state laws, including rules, regarding privacy.

This report shall be provided to the United States Congress by December 1, 2008, and may be used as supporting materials by the State of Texas in requests for additional federal appropriations to assist with these costs.

The Health and Human Services Commission or a public hospital district may compile and report the information required by this rider only in a manner the attorney general of this state certifies as consistent with federal law.

The Health and Human Services Commission again shall submit the required report to the Lieutenant Governor, Speaker of the House of Representatives, and Members of the Legislature by December 1, 2008, and shall include the information in the agency's annual report for 2008.

II – Executive Data Summary

TEXAS HEALTH AND HUMAN SERVICES COMMISSION
SERVICES AND BENEFITS PROVIDED TO UNDOCUMENTED IMMIGRANTS

Estimated cost of services and benefits provided to undocumented immigrants in fiscal year 2015:

(1) Texas Emergency Medicaid — $73 million

+

(2) Texas Family Violence Program (FVP) — $1.0 million

+

(3) Texas Children's Health Insurance Program (CHIP) Perinatal Coverage — $30 million

=

$104 million

Comparison of Estimates in Previous Reports and Current Estimate (in millions)

Program	**FY 2007**	**FY 2009**	**FY 2011**	**FY 2013**	**FY 2015**
(1) Texas Emergency Medicaid	$80	$62	$71	$90	$73
(2) Texas Family Violence Program	$1.2	$1.3	$1.3	$1.4	$1.0
(3) Texas Children's Health Insurance Program Perinatal Coverage	N/A*	$33	$35	$38	$30
TOTAL TEXAS HEALTH AND HUMAN SERVICES COMMISSION	**$81**	**$96**	**$107**	**$129**	**$104**

* Expenditures for CHIP Perinatal Coverage were not included in the original 2008 Rider 59 report since, at the time of its completion, a full year of program data was not available.

III – Analytical Notes

1. Undocumented Immigrant Estimates

For past reports, HHSC has relied on 2 separate sources of official federal government data to develop in-house estimates of the percent of Texas residents that are undocumented immigrants:

- The Texas-specific sample of the U.S. Census Bureau's American Community Survey (ACS), and;
- The Office of Immigration Statistics of the U.S. Department of Homeland Security (DHS).

The ACS provides direct (large survey-based) annual estimates of the total population in Texas according to U.S. citizen status (citizen versus non-citizen). However, the estimate of non-U.S. citizens is not broken down according to documented/undocumented status. The most recent available estimate is 2015.

In contrast, DHS uses ACS and additional data taken from administrative records to estimate the number and percent of undocumented non-citizens. The estimates are calculated for the U.S. as a whole and for some of the larger states, including Texas. The last available DHS estimates and reports were published in March 2013 for January 2012. No updates have been provided since then.

Before DHS suspended the publication of its estimates, HHSC derived its estimate by taking DHS's estimate for total undocumented immigrants in Texas and dividing it by the ACS estimate for total non-U.S. citizens in the state. This would result in the HHSC estimate of the proportion/percent of undocumented non-U.S. citizens in Texas.

With the indefinite suspension of DHS's reports, the ACS has become the most reliable source of official federal government data on the number of non-U.S. citizens in Texas.

In an attempt to avoid making uninformed estimates, and considering the historical record, HHSC opted to assume a conservative approach that presently no less than 50% of non-U.S. citizens residing in Texas are undocumented. Although the estimate is not as high as the former DHS method, and no other 'exact estimate' currently exists, given recent migration trends it's unlikely that the current estimate would be less than 50%.

2. Texas Emergency Medicaid

Emergency Medicaid, Type Program 30 (TP 30), is a federal and state funded program that provides Medicaid coverage, limited to emergency medical conditions including childbirth and labor to non-citizens including undocumented immigrants, living in the United States. Emergency Medicaid is a federally required program.

Three steps are necessary to estimate the cost of services and benefits that the Texas Health and Human Services Commission (HHSC) provided to undocumented immigrants: A) Determine total Emergency Medicaid (TP 30) expenditures during fiscal year 2015; B) Estimate the fraction of undocumented non-citizens during this timeframe and amounts expended on this population; and C) Calculate the state share of TP 30 expenditures for the undocumented population.

During fiscal year 2015 payments for Emergency Medicaid, TP 30, were as follows:

— A —

Texas Emergency Medicaid, Type Program 30, Fiscal Year 2015

Inpatient hospital	$303,177,586
Outpatient hospital	$25,110,412
Professional and other services	$21,105,306
Vendor drug	$112,961
(A) Total	**$349,506,265**

Since HHSC Medicaid claims data do not conclusively identify the legal residency status of immigrants, the portion of the $349.5 million in Emergency Medicaid payments attributable to undocumented immigrants must be estimated.

According to the U.S. Census Bureau's *American Community Survey* (ACS) for Texas, approximately 2.96 million non-citizens resided in Texas in 2015. The HHSC's Center for Analytics and Decision Support (CADS) estimates that no less than 50 percent of these residents (1.48 million) were undocumented. Therefore, the estimated amount paid for Emergency Medicaid services to undocumented immigrants residing in Texas is about $174.8 million.

— B —

(A) Texas Emergency Medicaid ($349.5 million)
x
Estimated Percent of Non-Citizens Who Are Undocumented Immigrants (50 percent)
=
(B_1) $175 million

The state shares the cost of the Medicaid program with the federal government, with Texas typically paying about 40 percent of Emergency Medicaid expenditures. However, in fiscal year 2009, due to provisions of the American Recovery and Reinvestment Act of 2009 (ARRA), the federal government temporarily increased its share of Medicaid expenditures to 68 percent, leaving the state with a 32 percent share. In fiscal year 2011, Texas' share of Medicaid expenditures increased to 33 percent. Texas' share for 2013 increased to pre ARRA levels (to approximately 41 percent) in 2013. In 2015, Texas's share of Medicaid program costs was 41.90 percent **(B_2)**. Therefore, the total estimated state cost for Emergency Medicaid services provided to undocumented immigrants residing in Texas in fiscal year 2015 was about $73 million**.**

— C —

(B_1) Estimated Texas Emergency Medicaid for Undocumented Immigrants Residing in Texas ($175 million)
x
(B_2) Texas Share of Medicaid Cost (41.90 percent)
=
$73 million

Comparison of Estimates in Previous Reports and Current Estimate

Expenditures	**FY 2007**	**FY 2009**	**FY 2011**	**FY 2013**	**FY 2015**
Inpatient hospital	$252,300,000	$275,010,314	$299,203,323	$299,447,148	$303,177,586
Outpatient hospital	$11,200,000	$13,248,238	$24,845,002	$26,084,046	$25,110,412
Professional and other services	$53,700,000	$20,778,110	$16,591,396	$19,043,497	$21,105,306
Vendor Drug	$124,500	$159,096	$93,345	$97,954	$112,961
(A) Sum of Expenditures	$317,324,500	$309,195,758	$340,733,067	$337,672,645	$349,506,265
(B_1) Estimated amount paid for services to undocumented immigrants	$200 million	$195 million	$215 million	$221 million	$175 million
(B_2) Texas' share of TP 30 expenditures*	39.23%	31.74%	32.68%	40.79%	41.90%
(C) TEXAS' SHARE OF EXPENDITURES	**$80 million**	**$62 million**	**$71 million**	**$90 million**	**$73 million**

*FY 2009 and 2011 represent years for which the Federal ARRA program reduced Texas' share of Medicaid payments.

3. Texas Family Violence Program

The Texas Family Violence Program (FVP) provides emergency support and prevention services for survivors of family violence and their children through shelter, nonresidential and special nonresidential project contracts with local community and faith-based nonprofit organizations. The FVP contracted family violence centers provide comprehensive services which includes: 24-hour emergency shelter and crisis hotline services, referrals to existing community services and employment resources, emergency medical care and transportation, crisis intervention for adults and children, educational arrangements for children, and legal advocacy in civil and criminal justice system. In fiscal year 2015, the FVP funded 71 non-profit family violence shelters, 10 non-residential centers, 28 special nonresidential projects, and 17 exceptional item funding projects, providing comprehensive family violence services to victims, with a total budget of $27,360,863.

State general revenue and Temporary Assistance for Needy Families (TANF) converted to Title XX accounted for about $19 million ($18,548,732) of the program's total spending for direct services. Services are provided without any financial eligibility testing and are free of charge.

The FVP does not screen family violence clients for residency status data. Therefore, the portion of the $19 million TANF to Title XX funds in Family Violence expenditures attributable to undocumented immigrants must be estimated. According to the U.S. Census Bureau's ACS for Texas, approximately 27.5 million individuals resided in Texas in 2015. This total includes 2.96 million non U.S. Citizens.

The HHSC's CADS estimates that at least half or 1.48 million of the non U.S. Citizens were undocumented. Based on this estimate, 5.4 percent of the total population of 27.5 million in 2015 were undocumented. The total estimated state cost for direct FVP services to undocumented immigrants residing in Texas in fiscal year 2015 was about $1 million.

Texas Family Violence Program Expenditures ($19 million)
x
Estimated Percent of Undocumented Immigrants in Texas (5.4 percent)
=
$1.0 million

Comparison of Estimates in Previous Reports and Current Estimate (in millions)

Expenditures	FY 2007	FY 2009	FY 2011	FY 2013	FY 2015
Texas Family Violence Program expenditures	$17	$19	$18	$20	$19
ESTIMATED COSTS FOR DIRECT FVP SERVICES TO UNDOCUMENTED IMMIGRANTS	**$1.2**	**$1.3**	**$1.3**	**$1.4**	**$1.0**

III – Analytical Notes (*Continued*)

4. Texas Children's Health Insurance Program Perinatal Coverage

The Texas Children's Health Insurance Program (CHIP) Perinatal Coverage provides prenatal care to low-income women living at up to 200 percent of the Federal Poverty Level who do not otherwise qualify for Medicaid, typically due to their citizenship status. Nearly all CHIP Perinatal Coverage enrollees are either documented or undocumented non-citizens. Since this program does not require citizenship documentation, there is no way to definitively report the number of undocumented immigrants served. Therefore, the portion of the $202.6 million in CHIP Perinatal Coverage expenditures (which represents prenatal services only) in fiscal year 2015 attributable to undocumented immigrants must be estimated. Note: CHIP Perinatal Coverage expenditures were not included in the original Rider 59 report since, at the time of its completion, a full year of program data was not available.

According to the U.S. Census Bureau's ACS for Texas, approximately 2.96 million non-citizens resided in Texas in 2015. The HHSC's CADS estimates that no less than 50 percent of these residents, or no less than 1.48 million were undocumented. Therefore, this brings the estimated amount paid for Texas CHIP Perinatal Coverage services to undocumented immigrants residing in Texas for fiscal year 2015 to about $101.5 million.

Texas CHIP Perinatal Coverage Expenditures ($202.6 million)
x
Estimated Percent of Non-Citizens Who Are Undocumented Immigrants (50 percent)
=
$101 million

The state shares the cost of the CHIP program with the federal government. Texas pays about 29.32 percent of expenditures. Therefore, the total estimated state cost for CHIP Perinatal Coverage to undocumented immigrants residing in Texas in fiscal year 2015 was about $30 million**.**

Estimated CHIP Perinatal Coverage for Undocumented
Immigrants Residing in Texas ($101 million)
x
Texas Share of CHIP Expenditures (29.32 percent)
=
$30 million

Comparison of Estimates in Previous Reports and Current Estimate (in millions)

Expenditures	**FY 2007**	**FY 2009**	**FY 2011**	**FY 2013**	**FY 2015**
Texas CHIP Perinatal Coverage expenditures	*	$188	$201	$204	$203
Estimated amount paid for services to undocumented immigrants	*	$118	$127	$134	$101
TEXAS' SHARE OF THE EXPENDITURES	*****	**$33**	**$35**	**$38**	**$30**

* Expenditures for CHIP Perinatal Coverage were not included in the original 2008 Rider 59 report since, at the time of its completion, a full year of program data was not available.

IV – References

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Exhibit 11

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

STATE OF TEXAS, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No.
	)	
UNITED STATES OF AMERICA, et al.,	)	
	)	
Defendants	)	

DECLARATION OF DONALD DEERE, Ph.D.

My name is Donald Deere, and I am over the age of 18 and fully competent in all respects to make this declaration. I have personal knowledge and expertise of the matters herein stated.

Qualifications

1. I am a Senior Economist for Welch Consulting, a firm that provides expert services in economics and statistics to the legal community, as well as general consulting in economics and statistics. Previously, I served as a Senior Economist for Unicon Research Corporation, a firm that conducted grant and contract research for U.S. government agencies.

2. In 2007, I retired from the tenured faculty of the Department of Economics at Texas A&M University, where I taught courses in labor economics, statistics, and public finance. I have since served as an Adjunct Associate Professor of Economics at Texas A&M University. Formerly, I was Associate Director of the

George Bush School of Government and Public Service, where I also taught as a member of the visiting faculty in 2008.

3. I received training in economics and statistics at the Massachusetts Institute of Technology, where I earned a Ph.D. in Economics in 1983. I have taught at M.I.T., the University of California, Santa Barbara, and Texas A&M University. My research has been published in numerous professional, peer-reviewed journals, including the *American Economic Review*, the *Journal of Political Economy*, the *Quarterly Journal of Economics*, and the *Journal of Labor Economics*.

4. Attached to this declaration are true and correct copies of the following documents:

- Appendix 1 includes my curriculum vitae and a list of my publications.
- Appendix 2 sets forth the cases in which I have testified in deposition or at trial during the last four years.

Scope of Inquiry

5. I have been retained in this case by the Office of the Attorney General of Texas to examine the potential economic impact on the labor market of the interaction between the Department of Homeland Security Memorandum dated June 15, 2012 ("DHS Memorandum")[1] and the employer mandate provisions in the Affordable Care Act ("ACA").

6. My billing rate for this matter is $525 per hour.

[1] The DHS Memorandum regards the exercise of "prosecutorial discretion" for certain undocumented immigrants. The subject of the DHS Memorandum, from Janet Napolitano, Secretary of Homeland Security, is "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children."

Background on the Affordable Care Act and the DHS Memorandum

7. It is my understanding that as a result of the DHS Memorandum the number of undocumented immigrants with an Employment Authorization Document ("EAD") has expanded nationwide.[2] I also understand that these individuals authorized to work are not eligible for the premium subsidies provided by the ACA.[3]

8. The Congressional Budget Office and the Joint Committee on Taxation in March 2012 estimated the impact of the ACA on nonelderly workers and their families who were projected to receive employment-based coverage in 2016 *in the absence of the ACA*. The resulting estimates are that 64 million of these individuals will be eligible for subsidies in the exchanges under the ACA.[4]

9. The ACA mandates that employers with 50 or more full-time employees offer health insurance that provides "minimum value" and is "affordable" to their full-time employees.[5]

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[2] DACA_Population_Data_Jan_31_2018, available at https://www.uscis.gov/tools/reports-studies/immigration-forms-data.

[3] HealthCare.gov, Immigration status and the Marketplace, available at https://www.healthcare.gov/immigrants/immigration-status. See also, 8 U.S. Code § 1611 - Aliens who are not qualified aliens ineligible for Federal public benefits, and 45 CFR 152.2 – Definitions, Legal Information Institute.

[4] Congressional Budget Office, *CBO and JCT's Estimates of the Effects of the Affordable Care Act on the Number of People Obtaining Employment-Based Health Insurance* at 12-14 (Mar. 2012), available at http://www.cbo.gov/sites/default/files/03-15-ACA_and_Insurance_2.pdf. An estimated 8.7 million Marketplace Enrollees were receiving Advance Premium Tax Credits in February 2017. See Kaiser Family Foundation, *Estimated Total Premium Tax Credits Received by Marketplace Enrollees*, available at https://www.kff.org/state-category/health-reform/february-2017-marketplace-enrollment/.

[5] Internal Revenue Service, Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act at Question 1 (2018), available at https://www.irs.gov/affordable-care-act/employers/questions-and-answers-on-employer-shared-responsibility-provisions-under-the-affordable-care-act.

10. To my knowledge, "minimum value" requires that health insurance pay at least 60% of the cost of covered services for employees and their children up to age 26. The ACA does not require the employer to pay the entire cost of this coverage, but the mandate to be "affordable" requires that the cost to the employee for this coverage be no more than 9.5% of the employee's income.[6]

11. An employer offering coverage that does not provide "minimum value" or is not "affordable" will owe a penalty under the ACA if any of its employees purchases coverage on the insurance exchange *and receives a premium subsidy*. It is my understanding that this penalty is the lesser of a) $2,320 per year per employee after the first 30 employees, or b) $3,480 per year per employee receiving a premium subsidy.[7]

12. Because this penalty is not a deductible expense for the employer from federal (and possibly state) income taxes,[8] the before-tax penalty amount, which would be compared to the wage, is even larger.[9]

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[6] Internal Revenue Service, Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act, *supra*, at Questions 38-41.

[7] Internal Revenue Service, Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act, *supra*, at Questions 52-54. See also, Edward A. Morse, *Lifting the Fog: Navigating Penalties in the Affordable Care Act*, 46 CREIGHTON L. REV. 207, 221-22 (2013). For the $3,480 penalty to apply, the employer must have less than a minimum of 26.7% of its employees receiving a premium subsidy. This cutoff % rises with the number of employees—to 46.7% for an employer with 100 total employees and to a maximum of 66.7% (the cutoff % equals 2/3 – 20/# employees).

[8] Morse, *supra*, at 223.

[9] For an employer facing a 21% federal corporate income tax rate and the $3,480 penalty, the equivalent annual before-tax amount is at least $4,405.06.

Interaction of the DHS Memorandum
and the ACA on the Labor Market

13. As a threshold matter, the addition of some 683,000 work-eligible individuals nationwide, with 112,000 of these in Texas, will, other things equal, put downward pressure on wages and make it more difficult for some U.S. citizens to find employment. In addition, the interaction of the DHS Memorandum and the ACA will further impact employment and wages in the labor market.[10]

14. Consider an employer facing this penalty that is considering hiring one of two prospective employees. These two employees are equally productive and are the same in all relevant aspects to this employer, except that applicant A is a U.S. citizen and applicant B is a DACA recipient holding an EAD.

15. Assume applicants A and B are relatively low skilled, so that the cost to the employee of the coverage offered by this employer exceeds 9.5% of the wage that would be offered to them. Also assume that this employer expects less than 25% of its employees to obtain a premium subsidy.

16. In this scenario, the employer would expect applicant A to be more expensive to employ than applicant B because of the interaction of the ACA penalties described above and the DHS Memorandum. There is an extra cost of $3,480 per year (plus the tax impact noted above) from hiring applicant A if applicant A will receive a premium subsidy. In contrast, hiring applicant B entails no extra cost because applicant B is not eligible for a premium subsidy.

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[10] As an example, for the employer in footnote 9, the penalty would increase the relative annual cost of employing a worker 30 hours per week at the federal minimum wage who receives a premium subsidy by almost 40%.

17. An employer subject to the ACA penalties described above that is operating to minimize its expected cost of operations will hire applicant B instead of applicant A. Applicant A, therefore, will take longer to find employment and the resulting employment is more likely to occur at a lower wage.

18. Depending on the employee cost of insurance, the incentive to hire applicant B can occur at a range of wage levels, as illustrated in the following two examples.

Example 1

19. In addition to the above facts, suppose that applicants A and B would be paid the federal minimum wage of $7.25 per hour. Assuming 30 hours per week (the definition of full time in the ACA), a monthly employee cost of $89.54 or greater ($7.25 x 130 hours x 9.5%) would make the employer-provided coverage not "affordable" and would make applicant A eligible for the premium subsidy and potentially trigger the extra $3,480 per year cost (plus the tax impact) from hiring applicant A.[11] There is no extra cost from hiring applicant B.

20. As a result, the employer will hire applicant B instead of applicant A if the employer is operating to minimize its expected cost of operations.

[11] At 40 hours per week, the monthly employee cost would have to be no more than $119.38 to be "affordable."

Example 2

21. As an alternative, suppose that applicants A and B would be paid $30,000 per year (about twice the federal minimum wage for 40 hours per week).[12] A monthly employee cost for employee and dependent coverage in excess of $237.50 (9.5% x $30,000/12) would not be "affordable" and would make applicant A eligible for the premium subsidy and potentially trigger the extra $3,480 per year cost (plus the tax impact) from hiring applicant A. Again, there is no extra cost from hiring applicant B.

22. Similar to the previous example, the employer in this example would be expected to hire applicant B instead of applicant A in an effort to minimize costs.

Conclusion

23. The interaction of the DHS Memorandum and the mandate provisions of the ACA gives employers a financial incentive to hire an undocumented immigrant who is authorized to work instead of an identically skilled citizen in certain instances.

24. Based on my knowledge and expertise in labor economics, it is my expert opinion that as a result of the interaction between the DHS Memorandum and the ACA, there will be relatively less hiring of U.S. citizens and relatively lower wages on average for those who are hired. The interplay between the DHS Memorandum

[12] Using 35 hours per week instead of the ACA limit of 30 to define full-time, the U.S. Census Bureau reports that more than 23.8 million persons were employed full-time and full-year in 2016 with annual earnings below $30,000. U.S. Census Bureau, *Current Population Survey, 2017 Annual Social and Economic Supplement* at Table PINC-10, *available at* https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pinc/pinc-10.2016.html.

and the ACA makes some U.S citizens more expensive to hire than equally productive undocumented immigrants.

25. This result will have adverse consequences for certain U.S. citizens because some employers will find it financially advantageous to hire an undocumented immigrant who is authorized to work in the U.S. instead of an equally productive U.S. citizen.

26. All of the facts and information contained within this declaration are within my personal knowledge and are true and correct to the best of my knowledge.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 27th day of April, 2018.

[signature]
DONALD DEERE

Appendix 1

Donald R. Deere, Ph.D.

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EDUCATION

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PROFESSIONAL EXPERIENCE

Senior Economist
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2008

Associate Professor of Economics
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1990 – 2007

Senior Consultant
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1991 – 2005

Associate Director for Academic Programs
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1996 – 1999

Donald R. Deere is a Senior Economist in the Bryan, Texas office of Welch Consulting. Dr. Deere's work has included statistical and economic analysis in cases involving claims of discrimination in employment, housing, transportation and insurance, in cases involving wage and hour violations, and in cases involving lost earnings or commercial damages. He also has conducted analyses of compensation practices for internal and OFCCP audit purposes. Dr. Deere has provided testimony in cases in both state and federal courts.

Dr. Deere has a Ph.D. in economics from the Massachusetts Institute of Technology. In 2007, Dr. Deere retired from the tenured faculty of the Department of Economics at Texas A&M University, where he taught courses in labor economics, economic principles and public finance. While at Texas A&M University, he also taught graduate statistics in, and was Associate Director of the George Bush School of Government and Public Service. Dr. Deere also is Senior Economist for Unicon Research Corporation, where he served as Vice President from 2001-2004. Dr. Deere's research has concentrated primarily on labor markets and public policy affecting wages and employment. His research has been published in numerous professional peer-reviewed journals, including the *American Economic Review*, the *Journal of Political Economy*, the *Quarterly Journal of Economics*, and the *Journal of Labor Economics*.

PUBLICATIONS

"Analyzing Reductions in Force and Other Termination Decisions," with James E. Pearce in Adverse Impact Analysis: Understanding Data, Statistics, and Risk, edited by Scott B. Morris and Eric M. Dunleavy, Routledge Taylor & Francis Group, (2017): 239-257.

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PROFESSIONAL EXPERIENCE (continued)

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Assistant Professor of Economics
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1983 –1990

PUBLICATIONS (continued)

"Home Equity: Texas Should Unlock This Asset," The Dallas Morning News, April 23, 1995.

"Unionization and Profitability: Evidence of Spillover Effects," with S.G. Bronars, Journal of Political Economy, (December 1994):1281-87.

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SELECTED WORKING PAPERS

"Plant Closings, Large Layoffs, and Advance Notice Provision," with S.N. Wiggins.

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"Competitive Incentives: School Accountability and Student Outcomes in Texas," with W.E. Strayer.

"Climbing the Economic Ladder," with A.J. Rettenmaier.

HONORS AND AWARDS

Fellowships:

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Sloan Foundation Dissertation Research Fellowship.

Research Grants/Contracts:

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Peer Review:

Professional Journals:

American Economic Review
Journal of Political Economy
Quarterly Journal of Economics
Journal of Labor Economics
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Appendix 2

Testimony Given in Last 4 Years by Donald Deere

United States of America and the State of Texas, Ex Rel. Keith Waldmann et al. v. McAllen Medical Center, et al.
Deposition: 11/10/16
In the United States District Court for the Southern District of Texas McAllen Division
Civil Action No. 7:13-cv-495(M)

AJP Oil Company, LLC, D/B/A Grapeland Fuel and BBQ v. Velvin Oil Company, Inc.
Deposition: 07/12/16
In the 3rd District Court of Houston County, Texas
Civil Action No. 14-0217

Kimberly A. Nice, a Personal Representative of the Estate of Shawn R. Nice v. L-3 Communications Vertex Aerospace, LLC, et al
Deposition: 06/17/16
In the United States District Court for the Northern District of Florida, Pensacola Division
Civil Action No. 3:12-CV-00009-MCR-CJK

Barbara Semons, as Next Friend and Guardian of William Warren v. Houston Party Rental, Inc. and Sam Houston Area Council Boy Scouts of America
Deposition: 06/12/15
In the 80th Judicial District Court, Harris County, Texas
Cause No. 201407399

Noll, et al. v. Ebay Inc., et al.
Deposition: 09/29/14
United States District Court Northern District of California, San Jose Division
Case No. 5:11-CV-04585-EJD

Exhibit 12

No.

In the Supreme Court of the United States

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, ET AL., PETITIONERS

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT

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QUESTIONS PRESENTED

This dispute concerns the policy of immigration enforcement discretion known as Deferred Action for Childhood Arrivals (DACA). In 2016, this Court affirmed, by an equally divided Court, a decision of the Fifth Circuit holding that two related Department of Homeland Security (DHS) enforcement policies, including an expansion of the DACA policy, were likely unlawful and should be enjoined. See *United States* v. *Texas*, 136 S. Ct. 2271 (per curiam). In September 2017, the former Acting Secretary of Homeland Security determined that the original DACA policy would likely be struck down by the courts on the same grounds and that the policy was unlawful. Accordingly, she instituted an orderly wind-down of the DACA policy.

The district court here concluded that respondents are likely to succeed in proving that the Acting Secretary's decision to rescind the DACA policy was arbitrary and capricious, and it enjoined DHS from rescinding it on a nationwide basis while this litigation proceeds. The questions presented are as follows:

1. Whether the Acting Secretary's decision to wind down the DACA policy is judicially reviewable.

2. Whether the Acting Secretary's decision to wind down the DACA policy is lawful.

PARTIES TO THE PROCEEDING

Petitioners are the United States Department of Homeland Security; Donald J. Trump, President of the United States; Kirstjen M. Nielsen, Secretary of Homeland Security; Jefferson B. Sessions III, Attorney General of the United States; and the United States of America.

Respondents are the Regents of the University of California; Janet Napolitano, President of the University of California; the State of California; the State of Maine; the State of Maryland; the State of Minnesota; the City of San Jose; Dulce Garcia; Miriam Gonzalez Avila; Saul Jimenez Suarez; Viridiana Chabolla Mendoza; Norma Ramirez; Jirayut Latthivongskorn; the County of Santa Clara; and Service Employees International Union Local 521.

TABLE OF CONTENTS

Page

Opinions below ... 1
Jurisdiction ... 2
Statutory provisions involved ... 2
Statement ... 2
Reasons for granting the petition ... 12
I. The decision below is in need of immediate review ... 13
II. The decision below is wrong ... 15
A. The Rescission Memo is not reviewable ... 16
B. The Rescission Memo is lawful ... 24
1. The rescission was reasonable in light of the Fifth Circuit's decision and the impending litigation ... 24
2. The rescission was reasonable in light of the Acting Secretary's determination that DACA is unlawful ... 31
Conclusion ... 33
Appendix A — District court order (Jan. 9, 2018) ... 1a
Appendix B — District court notice of appeal (Jan. 16, 2018) ... 71a
Appendix C — District court order granting in part defendants' motion to dismiss under FRCP 12(b)(6) (Jan. 12, 2018) ... 76a
Appendix D — Memorandum on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012) ... 95a
Appendix E — Memorandum on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents (Nov. 20, 2014) ... 100a

Table of Contents—Continued: Page

Appendix F — Memorandum on Rescission of Deferred Action for Childhood Arrivals (Sept. 5, 2017) 109a

Appendix G — Statutory provisions 118a

TABLE OF AUTHORITIES

Cases:

Abbott Laboratories v. *Gardner*, 387 U.S. 136 (1967) 29

Arizona v. *United States*, 567 U.S. 387 (2012) 2, 3, 18

Botezatu v. *INS*, 195 F.3d 311 (7th Cir. 1999), cert. denied, 531 U.S. 811 (2000) 22

Bowman Transp., Inc. v. *Arkansas-Best Freight Sys., Inc.*, 419 U.S. 281 (1974) 24, 25

Dames & Moore v. *Regan*, 453 U.S. 654 (1981) 14

Elgin v. *Department of Treasury*, 567 U.S. 1 (2012) 23

FCC v. *Fox Television Stations, Inc.*, 556 U.S. 502 (2009) 24

Green v. *Napolitano*, 627 F.3d 1341 (10th Cir. 2010) 23

Heckler v. *Chaney*, 470 U.S. 821 (1985) .... *passim*

I.C.C. v. *Brotherhood of Locomotive Eng'rs*, 482 U.S. 270 (1987) 16, 18, 19, 20, 21

Lewis v. *Casey*, 518 U.S. 343 (1996) 33

Lincoln v. *Vigil*, 508 U.S. 182 (1993) 16, 19, 20

Madsen v. *Women's Health Ctr., Inc.*, 512 U.S. 753 (1994) 33

Massachusetts v. *EPA*, 549 U.S. 497 (2007) 31, 32

Mistretta v. *United States*, 488 U.S. 361 (1989) 15

Motor Vehicles Mfrs. Ass'n v. *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983) 24, 29, 31

Reno v. *American-Arab Anti-Discrimination Comm.*, 525 U.S. 471 (1999) 3, 18, 21, 22, 24

Cases—Continued: Page

Texas v. *United States*:
86 F. Supp. 3d 591 (S.D. Tex.), aff'd, 809 F.3d 134 (5th Cir. 2015), aff'd, 136 S. Ct. 2271 (2016) 5
809 F.3d 134 (5th Cir. 2015), aff'd, 136 S. Ct. 2271 (2016) 5, 26, 27, 28, 29, 32
Thunder Basin Coal Co. v. *Reich*, 510 U.S. 200 (1994) 23
United States v. *Armstrong*, 517 U.S. 456 (1996) 17
United States v. *Nixon*, 418 U.S. 683 (1974) 14
United States v. *Texas*, 136 S. Ct. 2271 (2016) 5
Vasquez v. *Aviles*, 639 Fed. Appx. 898 (3d Cir. 2016) 22
Wayte v. *United States*, 470 U.S. 598 (1985) 19
Youngstown Sheet & Tube Co. v. *Sawyer*, 343 U.S. 579 (1952) 14

Constitution, statutes, and rules:

U.S. Const. Amend. V (Due Process Clause) 11
Administrative Procedure Act, 5 U.S.C. 551 *et seq.* 14
5 U.S.C. 701(a)(2) 8, 15, 16, 18, 20, 118a
5 U.S.C. 706(2)(A) 24, 119a
Clean Air Act, 42 U.S.C. 7401 *et seq.* 32
42 U.S.C. 7521(a)(1) 32
Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq.* 19
21 U.S.C. 352(f) 19
Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.* 2
8 U.S.C. 1103(a)(1) 2, 26
8 U.S.C. 1158(b)(1)(A) 3
8 U.S.C. 1182(a) (2012 & Supp. IV 2016) 3
8 U.S.C. 1182(d)(5)(A) 3

Statutes and rules—Continued: Page

8 U.S.C. 1182(h) ... 23
8 U.S.C. 1182(i) ... 23
8 U.S.C. 1227(a) ... 3
8 U.S.C. 1229b ... 3, 23
8 U.S.C. 1229c ... 23
8 U.S.C. 1252 ... 16, 21, 120a
8 U.S.C. 1252(a)(1) ... 22, 120a
8 U.S.C. 1252(a)(2)(B) ... 23, 121a
8 U.S.C. 1252(a)(2)(B)(i) ... 23, 122a
8 U.S.C. 1252(a)(2)(D) ... 23, 122a
8 U.S.C. 1252(b)(9) ... 22, 129a
8 U.S.C. 1252(g) ... 8, 21, 22, 23, 134a
8 U.S.C. 1255 ... 23

Railway Labor Act, 45 U.S.C. 151 *et seq.* ... 21
Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* ... 7
6 U.S.C. 202(5) ... 3, 18, 26, 30, 32
28 U.S.C. 1254 ... 13
28 U.S.C. 1254(1) ... 13
28 U.S.C. 1292(a)(1) ... 11
28 U.S.C. 1292(b) ... 11, 12, 13
28 U.S.C. 2101(e) ... 13
Fed. R. App. P. 5(a) ... 12
Fed. R. Civ. P.:
Rule 12(b)(1) ... 7, 8, 12
Rule 12(b)(6) ... 7, 11, 12
Sup. Ct. R. 11 ... 14

Miscellaneous:

The White House, *Remarks by the President on Immigration* (June 15, 2012), https://go.usa.gov/xnZFY ... 30

Miscellaneous—Continued: Page

Stephen M. Shapiro et al., *Supreme Court Practice* (10th ed. 2013) ... 13, 14

U.S. Citizenship & Immigration Servs., Deferred Action for Childhood Arrivals: Response to January 2018 Preliminary Injunction (Jan. 13, 2018), https://www.uscis.gov/humanitarian/deferred-action-childhood-arrivals-response-january-2018-preliminary-injunction. ... 10

In the Supreme Court of the United States

No.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, ET AL., PETITIONERS

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT

The Solicitor General, on behalf of the United States Department of Homeland Security and other federal parties, respectfully petitions for a writ of certiorari before judgment to the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The order of the district court granting respondents' motion for a preliminary injunction and denying the government's motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) (App., *infra*, 1a-70a) is not yet published in the Federal Supplement but is available at 2018 WL 339144. A separate order of the district court granting in part, and denying in part, the government's motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) (App., *infra*, 76a-94a) is not yet published in the Federal Supplement but is available at 2018 WL 401177.

JURISDICTION

On January 9, 2018, the district court denied the government's Rule 12(b)(1) motion, entered a preliminary injunction, and certified its Rule 12(b)(1) decision for interlocutory appeal. On January 12, 2018, the district court granted in part and denied in part the government's Rule 12(b)(6) motion and certified several of its rulings for interlocutory appeal. The government filed a notice of appeal of the order granting a preliminary injunction on January 16, 2018 (App., *infra*, 71a-75a). The same day, the government filed a petition for permission to appeal both the January 9 and January 12 orders that the district court had certified for interlocutory appeal. The court of appeals' jurisdiction over the appeal of the preliminary injunction rests on 28 U.S.C. 1292(a)(1). The court of appeals' jurisdiction over the appeal of the certified rulings would rest on 28 U.S.C. 1292(b). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and 28 U.S.C. 2101(e).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are set forth in the appendix to this petition. App., *infra*, 118a-134a.

STATEMENT

1. a. The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, charges the Secretary of Homeland Security "with the administration and enforcement" of the Act. 8 U.S.C. 1103(a)(1). Individual aliens are subject to removal if, *inter alia*, "they were inadmissible at the time of entry, have been convicted of certain crimes, or meet other criteria set by federal law." *Arizona* v. *United States*, 567 U.S. 387, 396 (2012); see

8 U.S.C. 1182(a) (2012 & Supp. IV 2016); see also 8 U.S.C. 1227(a). As a practical matter, however, the federal government cannot remove every removable alien, and a "principal feature of the removal system is the broad discretion exercised by immigration officials." *Arizona*, 567 U.S. at 396.

For any alien subject to removal, Department of Homeland Security (DHS) officials must first "decide whether it makes sense to pursue removal at all." *Arizona*, 567 U.S. at 396. After removal proceedings begin, government officials may decide to grant discretionary relief, such as asylum, parole, or cancellation of removal. See 8 U.S.C. 1158(b)(1)(A), 1182(d)(5)(A), 1229b. And, "[a]t each stage" of the process, "the Executive has discretion to abandon the endeavor." *Reno* v. *American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (*AADC*). In making these decisions, like other agencies exercising enforcement discretion, DHS must engage in "a complicated balancing of a number of factors which are peculiarly within its expertise." *Heckler* v. *Chaney*, 470 U.S. 821, 831 (1985). Recognizing the need for such balancing, Congress has provided that the "Secretary [of Homeland Security] shall be responsible for * * * [e]stablishing national immigration enforcement policies and priorities." 6 U.S.C. 202(5).

b. In 2012, DHS announced the policy known as Deferred Action for Childhood Arrivals (DACA). See App., *infra*, 95a-99a (June 15, 2012 memorandum). Deferred action is a practice in which the Secretary exercises discretion, "for humanitarian reasons or simply for [her] own convenience," to notify an alien of her decision to forbear from seeking his removal for a designated period. *AADC*, 525 U.S. at 484. A grant of deferred action does not confer lawful immigration status or provide any defense to removal. DHS retains discretion to revoke deferred action unilaterally, and the alien remains removable at any time.

DACA made deferred action available to "certain young people who were brought to this country as children." App., *infra*, 95a. Under the original DACA policy, following successful completion of a background check and other review, an alien would receive deferred action for a period of two years, subject to renewal. *Id.* at 97a-98a. The DACA policy made clear that it "confer[red] no substantive right, immigration status or pathway to citizenship," because "[o]nly the Congress, acting through its legislative authority, can confer these rights." *Id.* at 99a.

In 2014, DHS created a new policy referred to as Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA). See App., *infra*, 100a-108a. Through a process expressly designed to be "similar to DACA," DAPA made deferred action available for certain individuals who had a child who was a U.S. citizen or lawful permanent resident. *Id.* at 105a. At the same time, DHS also expanded DACA by extending the deferred-action period from two to three years and by loosening the age and residency criteria. *Id.* at 104a-105a.

c. Soon thereafter, Texas and 25 other States brought suit in the Southern District of Texas to enjoin DAPA and the expansion of DACA. The district court issued a nationwide preliminary injunction, finding a likelihood of success on the claim that the DAPA and expanded DACA memorandum was a "'substantive' rule that should have undergone the notice-and-comment rule making procedure" required by the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*

Texas v. *United States*, 86 F. Supp. 3d 591, 671 (2015); see *id.* at 607, 647, 665-678.

The Fifth Circuit affirmed the preliminary injunction, holding that the DAPA and expanded DACA policies likely violated both the APA and the INA. *Texas* v. *United States*, 809 F.3d 134, 146, 170-186 (2015). The court of appeals concluded that plaintiffs had "established a substantial likelihood of success on the merits of their procedural claim" that DAPA and expanded DACA were invalidly promulgated without notice and comment. *Id.* at 178. The court also concluded, "as an alternate and additional ground," that the policies were substantively contrary to law. *Ibid.* The court observed that the INA contains an "intricate system of immigration classifications and employment eligibility," and "flatly does not permit the reclassification of millions of illegal aliens as lawfully present" and eligible for "federal and state benefits, including work authorization." *Id.* at 184. And it noted that Congress had repeatedly declined to enact legislation "closely resembl[ing] DACA and DAPA." *Id.* at 185.

After briefing and argument, this Court affirmed the Fifth Circuit's judgment by an equally divided Court, *United States* v. *Texas*, 136 S. Ct. 2271, 2272 (2016) (per curiam), leaving in place the nationwide injunction against DAPA and the expansion of DACA.

d. In June 2017, Texas and other plaintiff States in the *Texas* case announced their intention to amend their complaint to challenge the original DACA policy. App., *infra*, 17a. They asserted that "[f]or the same reasons that DAPA and Expanded DACA's unilateral Executive Branch conferral of eligibility for lawful presence and work authorization was unlawful, the original June 15, 2012 DACA memorandum is also unlawful." D. Ct. Doc. 64-1, at 239.

On September 5, 2017, rather than engage in litigation in which DACA would be challenged on essentially the same grounds that succeeded in *Texas* before the same court, DHS decided to wind down the original DACA policy in an orderly fashion. See App., *infra*, 109a-117a (Rescission Memo). In the Rescission Memo, the Acting Secretary of Homeland Security explained that, "[t]aking into consideration the Supreme Court's and the Fifth Circuit's rulings in the ongoing litigation," as well as advice from the Attorney General that the original DACA policy was unlawful and that the "potentially imminent" challenge to DACA would "likely * * * yield similar results" to the *Texas* litigation, "it is clear that the June 15, 2012 DACA program should be terminated." *Id.* at 114a-115a. The Acting Secretary accordingly announced that, "[i]n the exercise of [her] authority in establishing national immigration policies and priorities," the June 15, 2012 memorandum was "rescind[ed]." *Id.* at 115a.

In light of the "complexities associated with winding down the program," however, the Rescission Memo explained that DHS would "provide a limited window in which it w[ould] adjudicate certain requests for DACA." App., *infra*, 115a. Specifically, DHS would "adjudicate—on an individual, case-by-case basis—properly filed pending DACA renewal requests * * * from current beneficiaries that have been accepted by the Department as of the date of this memorandum, and from current beneficiaries whose benefits will expire between the date of this memorandum and March 5, 2018 that have been accepted by the Department as of October 5, 2017." *Id.* at 115a-116a. The Rescission Memo further provided that the government "[w]ill not terminate the grants of previously issued deferred action * * * solely based on the directives in this memorandum" for the remaining two-year periods. *Id.* at 116a.

2. Shortly after the Acting Secretary's decision, respondents brought these five related suits in the Northern District of California challenging the rescission of DACA. App., *infra*, 19a-21a. Collectively, they allege that the termination of DACA is unlawful because it violates the APA's requirement for notice-and-comment rulemaking; is arbitrary and capricious; violates the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*; denies respondents equal protection and due process; and permits the government to use information obtained through DACA in a manner inconsistent with principles of equitable estoppel. See App., *infra*, 21a-22a. Similar challenges have been brought in district courts in New York, Maryland, Virginia, Florida, and the District of Columbia.

In November 2017, the government filed a motion to dismiss all five suits under Federal Rule of Civil Procedure 12(b)(1) and (b)(6).[1] At the threshold, the government argued that respondents' claims are not reviewable because the Acting Secretary's decision to rescind DACA is committed to agency discretion by law, see 5 U.S.C. 701(a)(2); and because judicial review of the denial of deferred action, if available at all, is barred under the INA prior to the issuance of a final removal order, see 8 U.S.C. 1252(g). The government further argued that respondents' substantive APA claims fail because the Acting Secretary rationally explained her decision to wind down the discretionary DACA policy given the imminent risk of a nationwide injunction and her reasonable conclusion that the policy is unlawful. Finally, the government argued that respondents' other claims are without merit because the rescission of DACA is exempt from notice-and-comment requirements; does not violate principles of equal protection or due process; and does not change the policies governing the use of aliens' personal information at all.

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[1] The government filed the administrative record in October 2017. Litigation ensued in which respondents sought and obtained orders from the district court directing a vast expansion of the administration record, in addition to immediate discovery. See, *e.g.*, D. Ct. Doc. 79 (Oct. 17, 2017). The government sought review of those orders in a petition for a writ of mandamus in the court of appeals, which the Ninth Circuit denied. See 875 F.3d 1200 (2017). After granting a stay of the district court's orders, see 138 S. Ct. 371 (2017), this Court granted the government's petition for a writ of certiorari, vacated the Ninth Circuit's judgment, and remanded for further proceedings. See 138 S. Ct. 443 (2017). On remand, the district court stayed its orders requiring expansion of the administrative record and authorizing

Respondents opposed the government's motion to dismiss and filed a motion for a preliminary injunction, seeking to prevent the government from rescinding the DACA policy.

3. On January 9, 2018, the district court denied the motion to dismiss to the extent it was based on Rule 12(b)(1), and entered a preliminary injunction requiring the government to "maintain the DACA program on a nationwide basis." App., *infra*, 66a; see *id.* at 1a-70a.

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discovery "pending further order." See D. Ct. Doc. 225 (Dec. 21, 2017). The court recently announced its view that "the order to complete the administrative record should be re-issued" and certified for interlocutory appeal. D. Ct. Doc. 240, at 1 (Jan. 12, 2018). It has directed the parties to brief by January 19 "whether some narrowing of the order is necessary or appropriate" before the order is reissued and "the extent to which * * * discovery should resume." *Id.* at 1-2.

The district court first ruled that the Acting Secretary's rescission of DACA was not committed to agency discretion by law. The court acknowledged that an agency's decisions "not to prosecute or initiate enforcement actions are generally not reviewable as they are 'committed to an agency's absolute discretion.'" App., *infra*, 27a (quoting *Chaney*, 470 U.S. at 831). But it concluded that the rescission of DACA was different because it involved a "broad enforcement polic[y]" rather than an "'individual enforcement decision'"; it rescinded a policy of enforcement discretion, instead of announcing a new one; and the "main" rationale for rescinding the prior policy was its "supposed illegality," which the court concluded it was authorized to decide. *Id.* at 28a-30a (citation omitted). The court also concluded that the INA did not preclude review because "plaintiffs do not challenge any particular removal but, rather, challenge the abrupt end to a nationwide deferred-action and work-authorization program." *Id.* at 30a-31a.

The district court then ruled that respondents were entitled to a preliminary injunction, concluding that they had demonstrated a likelihood of success on claims that the rescission of DACA was arbitrary and capricious. App., *infra*, 41a-62a. The court acknowledged that "a new administration is entitled to replace old policies with new policies so long as they comply with the law," *id.* at 2a, and the court did not dispute that DACA was a discretionary non-enforcement policy that was neither mandated nor specifically authorized by statute. The court nonetheless concluded that respondents were likely to succeed on their claims both because "the agency's decision to rescind DACA was based on a flawed legal premise" and because the government's "supposed 'litigation risk' rationale" was an invalid "post hoc rationalization" and, "in any event, arbitrary and capricious." *Id.* at 42a.

Finding that respondents had satisfied the remaining equitable requirements for an injunction, see App., *infra*, 62a-66a, the district court ordered the government, "pending final judgment" or other order, "to maintain the DACA program on a nationwide basis on the same terms and conditions as were in effect before the rescission on September 5, 2017." *Id.* at 66a. The court specifically directed that the government must "allow[] DACA enrollees to renew their enrollments." *Ibid.*[2] The court also required DHS to post "reasonable public notice that it will resume receiving DACA renewal applications" and to provide "summary reports to the Court (and counsel)" every three months about "its actions on all DACA-related applications." *Id.* at 67a.[3]

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[2] The district court identified certain "exceptions" to its injunction. The court specified "(1) that new applications from applicants who have never before received deferred action need not be processed; (2) that the advance parole feature need not be continued for the time being for anyone; and (3) that defendants may take administrative steps to make sure fair discretion is exercised on an individualized basis for each renewal application." App., *infra*, 66a-67a. The court also specified that "[n]othing in [its] order" would prohibit DHS from "remov[ing] any individual, including any DACA enrollee, who it determines poses a risk to national security or public safety, or otherwise deserves, in its judgment, to be removed." *Id.* at 67a.

[3] Consistent with the district court's order, DHS has issued guidance announcing that it has "resumed accepting requests to renew a grant of deferred action under DACA." U.S. Citizenship & Immigration Servs., Deferred Action for Childhood Arrivals: Response to January 2018 Preliminary Injunction (Jan. 13, 2018), https://www.uscis.gov/humanitarian/deferred-action-childhood-arrivals-response-january-2018-preliminary-injunction.

The district court certified its order for interlocutory appeal under 28 U.S.C. 1292(b), to the extent it denied the "questions interposed by the government in its motion to dismiss under [Rule] 12(b)(1)." App., *infra*, 70a.

4. On January 12, 2018, the district court issued a further order granting in part and denying in part the government's motion to dismiss to the extent it was based on Rule 12(b)(6). App., *infra*, 76a-94a. The court declined to dismiss respondents' substantive APA claims "[f]or the same reasons" stated in its January 9 order. *Id.* at 77a. The court also declined to dismiss respondents' claims that the rescission of DACA violated principles of equal protection based on race, *id.* at 88a-92a, and that DHS had violated the Due Process Clause by allegedly "chang[ing] its policy" on the use of personal information "provided by DACA recipients," *id.* at 84a-86a. The court dismissed respondents' remaining claims, including with respect to procedural notice-and-comment, the Regulatory Flexibility Act, procedural due process, equitable estoppel, and equal protection based on a fundamental right to a job. *Id.* at 77a-84a, 86a-88a, 92a. The court certified various of its holdings—including those adverse to the government—for interlocutory appeal pursuant to 28 U.S.C. 1292(b). See *id.* at 94a.

5. The government filed timely notices of appeal of the district court's January 9 preliminary-injunction order in each of the five suits. App., *infra*, 71a-75a; cf. 28 U.S.C. 1292(a)(1). The appeals have been consolidated and docketed as No. 18-15068, and remain pending before the court of appeals. The government also has filed a timely petition for permission to appeal from the district court's January 9 and January 12 orders granting in part and denying in part the government's

motion to dismiss under Rule 12(b)(1) and (b)(6); that petition has been docketed as No. 18-80004. See 28 U.S.C. 1292(b); Fed. R. App. P. 5(a).

REASONS FOR GRANTING THE PETITION

This Court's immediate review is warranted. The district court has entered a nationwide injunction that requires DHS to keep in place a policy of non-enforcement that no one contends is required by federal law and that DHS has determined is, in fact, unlawful and should be discontinued. The district court's unprecedented order requires the government to sanction indefinitely *an ongoing violation of federal law* being committed by nearly 700,000 aliens—and, indeed, to confer on them affirmative benefits (including work authorization)—pursuant to the DACA policy. That policy is materially indistinguishable from the DAPA and expanded DACA policies that the Fifth Circuit held were contrary to federal immigration law in a decision that four Justices of this Court voted to affirm. Without this Court's immediate intervention, the court's injunction will persist at least for months while an appeal is resolved and, if the court of appeals does not reverse the injunction, it could continue for *more than a year* given the Court's calendar.

To be sure, some of these harms could be avoided by a stay of the district court's order. But a primary purpose of the Acting Secretary's orderly wind-down of the DACA policy was to *avoid* the disruptive effects on all parties of abrupt shifts in the enforcement of the Nation's immigration laws. Inviting more changes before final resolution of this litigation would not further that interest. Moreover, a stay would not address the institutional injury suffered by the United States of being embroiled in protracted litigation over an agency decision that falls squarely within DHS's broad discretion over federal immigration policy and that is not even judicially reviewable. A stay also would not address the risk that the onerous discovery and administrative-record orders that already justified this Court's intervention will be reinstated and create the need for additional rounds of interlocutory appellate review. Accordingly, the government respectfully submits that the most suitable and efficient way to vindicate the law in these unique circumstances is to grant certiorari before judgment and resolve the dispute this Term.

I. THE DECISION BELOW IS IN NEED OF IMMEDIATE REVIEW

Congress has vested this Court with jurisdiction to review "[c]ases in the courts of appeals * * * [b]y writ of certiorari * * * *before or* after rendition of judgment or decree." 28 U.S.C. 1254(1) (emphasis added). "An application * * * for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment." 28 U.S.C. 2101(e).[4] This Court will grant certiorari before judgment "only upon a showing that the case is of such imperative public importance as to justify devia-

[4] By virtue of the government's notice of appeal, the district court's preliminary-injunction order is already "in the court[] of appeals" within the meaning of 28 U.S.C. 1254 and 2101(e). See Stephen M. Shapiro et al., *Supreme Court Practice* § 2.4, at 85-86 (10th ed. 2013). Accordingly, this petition is focused on the validity of that order. If the court of appeals grants the government's pending petition for interlocutory appeal, however, both the January 9 and January 12 orders will be "in the court[] of appeals" in their entirety, 28 U.S.C. 1254; see 28 U.S.C. 1292(b), and could therefore be reviewed by this Court.

tion from normal appellate practice and to require immediate determination in this Court." Sup. Ct. R. 11. This case satisfies that standard.

An immediate grant of certiorari is necessary in order to obtain an appropriately prompt resolution of this important dispute. Absent certiorari before judgment, it is likely that even expedited proceedings in the Ninth Circuit would entail many months of delay, during which time the district-court injunction would require the government to retain in place a discretionary policy that sanctions the ongoing violation of federal law by more than half a million people. Even if the losing party were to seek certiorari immediately following the Ninth Circuit's decision, this Court would not be able to review the decision in the ordinary course until next Term at the earliest.

From the start of these suits, all parties involved have agreed that time is of the essence. Respondents, the government, and the district court alike all have repeatedly asserted that a speedy resolution is critical.[5] This Court has granted certiorari before judgment in order to promptly resolve other time-sensitive disputes, and it should follow the same course here. See, *e.g.*, *Dames & Moore* v. *Regan*, 453 U.S. 654, 668 (1981); *United States* v. *Nixon*, 418 U.S. 683, 686-687 (1974); *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 584 (1952); cf. Stephen M. Shapiro et al., *Supreme Court Practice* § 4.20, at 287-288 (10th ed. 2013) (collecting

[5] See, *e.g.*, D. Ct. Doc. 87, at 1 (Oct. 23, 2017) (district-court response to mandamus petition) (declaring that "[t]ime is of the essence"); 17-801 Regents Br. in Opp. 30 (emphasizing "the time-sensitive nature of this case"); 9/21/2017 Tr. 18 (statement of government counsel) ("We think your suggestion to get to final judgment quickly makes a lot of sense in this case.").

cases where "[t]he public interest in a speedy determination" warranted certiorari before judgment).

Challenges to the rescission of the DACA policy are currently pending before courts in the Second, Fourth, Ninth, Eleventh, and District of Columbia Circuits, and the plaintiffs in nearly all of them are seeking similar nationwide injunctions. There can be no reasonable question that, as in *Texas*, this Court's review will be warranted. The Court is already familiar with the relevant issues in light of its consideration of the *Texas* case. Additional burdensome discovery, vast expansions of the administrative record, and privilege disputes would only burden the courts and parties without bringing any additional clarity to those issues. And given that the Fifth Circuit's decision in *Texas* held DAPA and the DACA expansion unlawful, and (as explained below) that court's reasoning applies to DACA as well, only this Court can resolve the conflict in the lower courts and provide much-needed clarity to the government and DACA recipients alike. See *Mistretta* v. *United States*, 488 U.S. 361, 371 (1989) (granting certiorari before judgment where constitutionality of sentencing guidelines presented question of "'imperative public importance'" and had resulted in "disarray among the Federal District Courts") (citation omitted).

II. THE DECISION BELOW IS WRONG

Review is further warranted because the decision below is incorrect. The Acting Secretary's decision to rescind DACA—which is simply a policy of enforcement discretion—is a classic determination that is "committed to agency discretion by law," 5 U.S.C. 701(a)(2), and therefore unreviewable under the APA. Even if DHS's prospective denial of deferred action were reviewable, the individual respondents could not obtain such review unless and until a final order of removal were entered against them. See 8 U.S.C. 1252. And even if it were reviewable now under the APA, the decision to rescind the DACA policy was not arbitrary and capricious. The Acting Secretary opted to wind down DACA after reasonably concluding that the policy was likely to be struck down by courts and indeed was unlawful.

A. The Rescission Memo Is Not Reviewable

1. a. The APA precludes review of agency actions that are "committed to agency discretion by law." 5 U.S.C. 701(a)(2). "Over the years," this Court has interpreted that provision to apply to various types of agency decisions that "traditionally" have been regarded as unsuitable for judicial review. *Lincoln* v. *Vigil*, 508 U.S. 182, 191 (1993). Section 701(a)(2) precludes review, for example, of an agency's decision not to institute enforcement actions, *Heckler* v. *Chaney*, 470 U.S. 821, 831 (1985); an agency's refusal to reconsider a prior decision based on an alleged "material error," *I.C.C.* v. *Brotherhood of Locomotive Eng'rs*, 482 U.S. 270, 282 (1987); and an agency's allocation of funds from a lump-sum appropriation, *Lincoln*, 508 U.S. at 192. Such exercises of discretion, the Court has explained, often require "a complicated balancing of a number of factors which are peculiarly within [the agency's] expertise." *Chaney*, 470 U.S. at 831.

With respect to an agency's enforcement discretion in particular, an agency may "not only assess whether a violation has occurred," but "whether agency resources are best spent on this violation or another"; whether enforcement in a particular scenario "best fits the agency's overall policies"; and whether the agency "has enough resources to undertake the action at all." *Chaney*, 470 U.S. at 831. In addition, the Court has noted that when an agency declines to enforce, it "generally does not exercise its *coercive* power over an individual's liberty or property rights, and thus does not infringe upon areas that courts often are called upon to protect." *Id.* at 832. In this way and others, agency enforcement discretion "shares to some extent the characteristics of the decision of a prosecutor in the Executive Branch not to indict—a decision which has long been regarded as the special province of the Executive Branch." *Ibid.*

b. The Acting Secretary's decision to discontinue an existing policy of enforcement discretion falls well within the types of agency decisions that traditionally have been understood as "committed to agency discretion." Like the decision to *adopt* a policy of selective non-enforcement, the decision whether to *retain* such a policy can "involve[] a complicated balancing" of factors that are "peculiarly within the expertise" of the agency, including determining how the agency's resources are best spent and how the non-enforcement policy fits with the agency's overall policies. *Chaney*, 470 U.S. at 831. Likewise, a decision to abandon an existing non-enforcement policy will not, in itself, bring to bear the agency's coercive power over any individual. Indeed, an agency's decision to reverse a prior policy of civil non-enforcement is akin to changes in policy as to criminal prosecutorial discretion, which regularly occur within the U.S. Department of Justice both within and between presidential administrations, and which have never been considered amenable to judicial review. See *United States* v. *Armstrong*, 517 U.S. 456, 464 (1996) ("[T]he decision *whether or not* to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in [the prosecutor's] discretion.") (emphasis added) (citation omitted).

This presumption of nonreviewability applies with particular force when it comes to immigration. On top of the general concerns implicated in any enforcement decision, in the immigration context a decision not to enforce tolerates not merely past misconduct but a "continuing violation of United States law." *Reno* v. *American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 490 (1999). In addition, the "dynamic nature of relations with other countries requires the Executive Branch to ensure that [immigration] enforcement policies are consistent with this Nation's foreign policy." *Arizona* v. *United States*, 567 U.S. 387, 396-397 (2012). Given these realities, the "broad discretion exercised by immigration officials" has become a "principal feature of the removal system." *Id.* at 396. In the absence of a statutory directive establishing "substantive priorities" or "otherwise circumscribing" the agency's discretion, *Chaney*, 470 U.S. at 833, the Court has found it "impossib[le]" to "devis[e] an adequate standard of review for such agency action," *Brotherhood of Locomotive Eng'rs*, 482 U.S. at 282. Respondents have not identified any such statutory directive here. To the contrary, Congress has specifically empowered the Secretary of Homeland Security to "[e]stablish[] national immigration enforcement policies and priorities." 6 U.S.C. 202(5). The revocation of an existing policy establishing such enforcement policies and priorities is therefore a decision that is "committed to agency discretion by law," 5 U.S.C. 701(a)(2), and not subject to arbitrary-and-capricious review.

c. The district court's reasons for rejecting that conclusion are both flatly inconsistent with this Court's precedents and unpersuasive on their own terms.

First, the district court reasoned that the rescission of the DACA policy was reviewable because it addressed "broad enforcement policies," instead of an individual enforcement decision. App., *infra*, 28a. That is irrelevant. Agency decisions about how its "resources are best spent" or how certain enforcement activity "best fits the agency's overall policies," *Chaney*, 470 U.S. at 831, are at least as susceptible to implementation through broad guidance as through case-by-case enforcement decisions. See, *e.g.*, *Wayte* v. *United States*, 470 U.S. 598, 601-603 (1985). Conversely, individual enforcement decisions are regularly informed by interpretations of the agency's substantive statute to determine "whether a violation has occurred." *Ibid.*; see *Brotherhood of Locomotive Eng'rs*, 482 U.S. at 283 ("[A] common reason for failure to prosecute an alleged criminal violation is the prosecutor's belief (sometimes publicly stated) that the law will not sustain a conviction.").

The non-enforcement decision in *Chaney* was not an individualized decision by the Food and Drug Administration (FDA) to forgo enforcement of the Federal Food, Drug, and Cosmetic Act (FDCA) against a particular alleged violator. Rather, the FDA concluded that, as a matter of the agency's discretion, it would *categorically* not enforce the FDCA's misbranding prohibition, 21 U.S.C. 352(f), against the use of certain drugs for capital punishment when those drugs had been approved by the FDA only for other medical purposes. 470 U.S. at 824-825. And, in *Lincoln*, the Indian Health Service's unreviewable decision reallocated funds from an entire regional treatment program in the Southwest to other nationwide Service programs, not from an individual's treatment plan. 508 U.S. at 184, 188. The question for purposes of Section 701(a)(2) is whether the agency's decision is inherently discretionary in nature, not the number of people to whom it applies.

Second, the district court reasoned that the rescission of the DACA policy was reviewable because, rather than adopting a policy of non-enforcement, it rescinded one. App., *infra*, 29a-30a. The DACA policy, the court determined, had "become an important program for DACA recipients and their families" and others, *ibid.*, and "[a]n agency action to terminate [an existing policy] bears no resemblance to an agency decision not to regulate something never before regulated." *Id.* at 30a. That is not so. As explained above, a decision whether to retain an enforcement policy implicates all of the same considerations about agency priorities and resources that inform the decision to adopt such a policy in the first instance. In *Lincoln*, for example, the Indian Health Service had operated its regional service for seven years, providing important medical treatment to disabled Indian children on which the recipients had undoubtedly come to rely. See 508 U.S. at 185-188. But notwithstanding that reliance, because nothing in the relevant statutes constrained the Service's discretion, this Court held that the Service's decision to discontinue the program was "committed to agency discretion by law." The same is true here.

Third, the district court concluded that the Acting Secretary's decision was reviewable because it was based in substantial part on her view of the legality of the original DACA policy. App., *infra*, 30a. In the court's view, "[t]he main, if not exclusive, rationale for ending DACA was its supposed illegality," and "determining illegality is a quintessential role of the courts." *Ibid.* As the court itself recognized, however, that reasoning cannot suffice: "[A] presumptively unreviewable agency action does not become reviewable simply because 'the agency gives a reviewable reason for otherwise unreviewable action.'" *Id.* at 30a n.7 (quoting *Brotherhood of Locomotive Eng'rs*, 482 U.S. at 283). Thus, in *Brotherhood of Locomotive Engineers*, the ICC's decision not to reconsider a prior decision was unreviewable, even though the agency based that denial on an interpretation of its legal obligations under the Railway Labor Act, 45 U.S.C. 151 *et seq.* 482 U.S. at 276, 283. And in *Chaney*, the FDA's decision not to enforce the misbranding prohibition did not become reviewable even though it was based, in part, on the agency's understanding of its authority to initiate such proceedings. 470 U.S. at 824.

2. At a minimum, Congress has foreclosed district courts from adjudicating collateral attacks on the Acting Secretary's discretionary enforcement decisions and policies in the manner pursued by respondents here.

a. Under 8 U.S.C. 1252, judicial review of DHS enforcement decisions is generally available, if at all, only through the review procedures of removal orders set forth in that section. In particular, Section 1252(g) states that "[e]xcept as provided in this section * * * no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the [Secretary of Homeland Security] to commence proceedings, adjudicate cases, or execute removal orders against any alien under this subchapter." In *AADC*, this Court explained that Section 1252(g) is "designed to give some measure of protection to 'no deferred action' decisions and similar discretionary determinations, providing that if they are reviewable at all, they at least will not be made the bases for separate rounds of judicial intervention outside the streamlined process that Congress has designed." 525 U.S. at 485.

The Acting Secretary's rescission of the DACA policy is such a "'no deferred action' decision[]," *AADC*, 525 U.S. at 485, and is an ingredient in the agency's "commence[ment] [of] proceedings" against aliens who are unlawfully in the country, 8 U.S.C. 1252(g). Thus, to the extent the rescission of the DACA policy is reviewable at all, it is reviewable only as otherwise "provided in [Section 1252]," *ibid.*—that is, through "[j]udicial review of a final order of removal," 8 U.S.C. 1252(a)(1). See, *e.g.*, *Vasquez* v. *Aviles*, 639 Fed. Appx. 898, 901 (3d Cir. 2016) (concluding that, under Section 1252(g), "[t]he District Court therefore lacked jurisdiction to consider [plaintiff's] challenge to his denial of DACA relief"); *Botezatu* v. *INS*, 195 F.3d 311, 314 (7th Cir. 1999) ("Review of refusal to grant deferred action is * * * excluded from the jurisdiction of the district court."), cert. denied, 531 U.S. 811 (2000). That conclusion is also reflected in 8 U.S.C. 1252(b)(9), which channels into the review of final removal orders all questions of fact or law arising from any action taken to remove an alien from the United States. See *AADC*, 525 U.S. at 483 (characterizing Section 1252(b)(9) as an "unmistakable 'zipper' clause").[6]

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[6] Even in instances where the statutory text less clearly precludes review, this Court has held that, where it is fairly discernible that Congress intends a particular review scheme to be exclusive, a plaintiff is not permitted to circumvent that exclusive scheme by filing a preemptive district-court action, but must instead present its

The conclusion that Congress intended to foreclose collateral review of the Acting Secretary's prospective rescission of a discretionary deferred-action policy is consistent with Congress's treatment of other kinds of discretionary DHS actions. For example, in 8 U.S.C. 1252(a)(2)(B), Congress provided that "no court shall have jurisdiction to review" judgments regarding the grant or denial of specified forms of discretionary relief—including cancellation of removal, voluntary departure, certain waivers of inadmissibility, and adjustment of status. See 8 U.S.C. 1252(a)(2)(B)(i) (citing 8 U.S.C. 1182(h), 1182(i), 1229b, 1229c, 1255). Congress provided a limited exception to that jurisdictional bar for "review of constitutional claims or questions of law," 8 U.S.C. 1252(a)(2)(D), but it mandated that any such review occur only "upon a petition for review [of a final order of removal] filed with an appropriate court of appeals in accordance with this section," *ibid.* See, *e.g.*, *Green* v. *Napolitano*, 627 F.3d 1341, 1347 (10th Cir. 2010).

b. The district court concluded that Section 1252(g) does not apply because respondents challenged "the across-the-board cancellation of a nationwide program," and did so "prior to the commencement of any removal proceedings" against respondents. App., *infra*, 31a-32a. But none of that matters. The denial of deferred action is a step toward the commencement of removal proceedings against an alien. Respondents cannot escape the INA's careful scheme for such proceedings simply by filing suit before the agency has officially initiated an enforcement proceeding against them. See *Thunder Basin Coal Co.* v. *Reich*, 510 U.S. 200, 207-208

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claims or defenses through the review scheme established by Congress. See *Elgin* v. *Department of Treasury*, 567 U.S. 1, 8-10 (2012); *Thunder Basin Coal Co.* v. *Reich*, 510 U.S. 200, 207-209 (1994).

(1994). Respondents' claims, "if they are reviewable at all," must be litigated in removal proceedings, not through "separate rounds of judicial intervention" in federal district court. *AADC*, 525 U.S. at 485.

B. The Rescission Memo Is Lawful

Even if the Acting Secretary's decision is reviewable under the APA, it is plainly valid. Under the APA, the Acting Secretary's decision must be upheld unless it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. 706(2)(A). That standard of review is "narrow," *Motor Vehicles Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983), and requires only that the "agency 'examine the relevant data and articulate a satisfactory explanation for its action,'" *FCC* v. *Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009) (citation omitted). "[A] court is not to substitute its judgment for that of the agency," *State Farm*, 463 U.S. at 43, and should "uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned," *Bowman Transp., Inc.* v. *Arkansas-Best Freight Sys., Inc.*, 419 U.S. 281, 286 (1974). The Acting Secretary's decision to begin an orderly wind-down of a policy of enforcement discretion that indisputably was not required by law—based on her grave concerns about the legality of that policy, and her knowledge that an impending lawsuit likely would have brought the policy to an immediate and disruptive end—easily passes that test.

1. The rescission was reasonable in light of the Fifth Circuit's decision and the impending litigation

The Acting Secretary reasonably rested her decision on her assessment of the risks presented by maintain-ing a policy (original DACA) that was materially indistinguishable to ones (expanded DACA and DAPA) that had been struck down by the Fifth Circuit in a decision affirmed by this Court—and she did so in the face of the threat by Texas and other States to challenge DACA on the same grounds. That rationale alone provides a permissible reason for initiating an orderly wind-down of the policy.

a. The district court improperly rejected this rationale as a "post hoc rationalization[]" for the Acting Secretary's decision. App., *infra*, 55a. In the court's view, "[t]he Attorney General's letter and the Acting Secretary's memorandum can only be reasonably read as stating DACA was illegal and that, *given that DACA must, therefore, be ended,* the best course was 'an orderly and efficient wind-down process,' rather than a potentially harsh shutdown in the Fifth Circuit." *Id.* at 56a. But that is plainly not the only rationale that "may reasonably be discerned" from the Rescission Memo. *Bowman*, 419 U.S. at 286. In that memorandum, the Acting Secretary recounted in significant detail the litigation surrounding the DAPA and expanded DACA policies. See App., *infra*, 111a-114a. The memorandum noted that the agency's prior June 2017 decision to discontinue DAPA and expanded DACA was made after "considering the [government's] likelihood of success on the merits of th[at] ongoing litigation." *Id.* at 114a. It described the subsequent letter from Texas and other States to the Attorney General notifying him of those States' intention to amend the existing lawsuit to challenge the original DACA policy. *Ibid.* It quoted the Attorney General's statement that "it is likely that potentially imminent litigation would yield similar results with respect to DACA." *Ibid.* And it stated that, in light of the foregoing, and "[i]n the exercise of [her] authority in establishing national immigration policies and priorities," the Acting Secretary had decided that the DACA policy "should" be terminated and wound down in "an efficient and orderly fashion." *Id.* at 115a; cf. 6 U.S.C. 202(5). A reasonable reading of the Rescission Memo is that the Acting Secretary's decision was informed by the risk that the government was not "likel[y]" to "succe[ed]" on the merits of the "imminent litigation." App., *infra*, 114a.

The district court also posited that litigation risk could not have been a rationale for the Acting Secretary's decision because, "once the Attorney General had determined that DACA was illegal, the Acting Secretary had to accept his ruling as 'controlling.'" App., *infra*, 56a (citing 8 U.S.C. 1103(a)(1)). But even if the Acting Secretary were bound by the Attorney General's legal determination as to DACA's unlawfulness, that is not inconsistent with the Acting Secretary's assertion of an additional, independent litigation-risk rationale for winding down the policy.

b. The Acting Secretary's rationale was eminently reasonable. In *Texas* v. *United States*, the Fifth Circuit concluded that DAPA and expanded DACA were unlawful on both procedural and substantive grounds. 809 F.3d at 178 (2015); see *id.* at 147 n.11 (including the "DACA expansions" within the opinion's references to "DAPA"). The entirety of the Fifth Circuit's reasoning applies equally to the original DACA policy. With respect to procedure, the Fifth Circuit concluded that the memorandum expanding DACA and creating DAPA was not exempt from notice and comment as a statement of policy because of how the *original DACA policy* had been implemented. See *id.* at 171-178. The court found that, "[a]lthough the DAPA Memo facially purports to confer discretion," in fact it would operate as a binding statement of eligibility for deferred action because that is how the original DACA policy had been implemented. *Id.* at 171; see *id.* at 174 n.139.

As a matter of substance, the Fifth Circuit held that DAPA and expanded DACA were contrary to the INA because (1) "[i]n specific and detailed provisions," the INA already "confers eligibility for 'discretionary relief,'" including "narrow classes of aliens eligible for deferred action," 809 F.3d at 179 (citation omitted); (2) the INA's otherwise "broad grants of authority" could not reasonably be construed to assign to the Secretary the authority to create additional categories of aliens of "vast 'economic and political significance,'" *id.* at 182-183 (citations omitted); (3) DAPA and expanded DACA were inconsistent with historical deferred-action policies because they were not undertaken on a "country-specific basis * * * in response to war, civil unrest, or natural disasters" nor served as a "bridge[] from one legal status to another," *id.* at 184 (citation omitted); and (4) "Congress ha[d] repeatedly declined to enact the Development, Relief, and Education for Alien Minors Act ('DREAM Act'), features of which closely resemble DACA and DAPA." *Id.* at 185 (footnote omitted). Every one of those factors also applies to the original DACA policy.

c. The district court here nevertheless faulted the Acting Secretary for failing to address perceived distinctions between DACA and the DAPA and expanded DACA policies. App., *infra*, 57a-58a; see *id.* at 51a-54a. It is true enough that the Fifth Circuit noted that "any extrapolation from DACA [to DAPA] must be done carefully." *Texas*, 809 F.3d at 173. The differences it noted, however, were reasons why DAPA might be lawful even if DACA were not, rather than the other way around. See *id.* at 174 (noting that the "DAPA Memo contain[ed] additional discretionary criteria"). And, in any event, the Fifth Circuit went on to affirm, "under any standard of review," the district court's comparison of the policies. *Id.* at 174 n.139.

The district court suggested that DAPA might have been more vulnerable to challenge because "Congress had already established a pathway to lawful presence for alien parents of citizens," while "no such analogue" exists for DACA recipients. App., *infra*, 54a. That reasoning is entirely backward. If Congress's creation of pathways to lawful presence is relevant at all, then the fact that Congress has done so only for DAPA recipients—and not DACA recipients—surely must render DACA *more* inconsistent with the INA. In any event, the basis of the Fifth Circuit's *Texas* decision was not the existence of a particular statutory pathway to lawful presence, but the "specific and intricate provisions" of the INA as a whole addressing discretionary relief. 809 F.3d at 186. Those provisions no more include DACA recipients than those of DAPA. As confirmation of that fact, the Fifth Circuit also affirmed the injunction with respect to expanded DACA—which differed from the original DACA policy only in the length of the deferred-action period and in its modified age and duration-of-residence requirements.

The district court also reasoned that DACA might be distinguishable from DAPA because 689,800 aliens are recipients of DACA, whereas 4.3 million aliens potentially qualified for DAPA. App., *infra*, 54a. But whatever the ultimate number of individuals that might be affected, there can be no debate that DACA is, like DAPA and expanded DACA, a policy of "vast 'economic and political significance,'" to which the Fifth Circuit's reasoning would apply. *Texas*, 809 F.3d at 183 (citations omitted). By contrast, the type of historical deferred-action practices that the Fifth Circuit suggested might be permissible were much more "limited in time and extent, affecting only a few thousand aliens for months or, at most, a few years." *Id.* at 185 n.197. The Acting Secretary did not act arbitrarily in failing to credit a distinction between DACA and DAPA that the Fifth Circuit had expressly rejected.

Finally, the district court erred in suggesting that, whether or not the original DACA policy was unlawful as it had been implemented, it could have been fixed "by simply insisting on exercise of discretion" in individual cases. App., *infra*, 54a. The Fifth Circuit relied on the lack of individual discretion only for its conclusion that the DAPA Memorandum was *procedurally* unlawful, not substantively so. Thus, even if the Acting Secretary could have altered the DACA policy sufficiently to overcome that concern, there is no indication that it would have changed the Fifth Circuit's substantive conclusion—at least unless the change were so drastic as to return to a practice of "single, ad hoc grants of deferred action made on a genuinely case-by-case basis," *Texas*, 809 F.3d at 186 n.202, which is precisely what the rescission of the DACA policy achieves.[7]

[7] Nor did the Acting Secretary "fail[] to consider an important aspect of the problem," *State Farm*, 463 U.S. at 43, by not discussing the possibility of defending DACA on the basis of laches. App., *infra*, 57a. That doctrine may provide a defense in an APA action against the government where a plaintiff's unreasonable delay in bringing suit prejudiced the government. See *Abbott Laboratories* v. *Gardner*, 387 U.S. 136, 155 (1967). The district court did not explain what prejudice the government might have established from Texas's failure to bring suit earlier.

d. The district court also ruled that the Acting Secretary's decision was arbitrary and capricious because she "should have—but did not—weigh DACA's programmatic objectives as well as the reliance interests of DACA recipients." App., *infra*, 58a. By its own terms, however, DACA made deferred action available for only two-year periods, which could "be terminated at any time at the agency's discretion." *Id.* at 102a. When he announced DACA in 2012, President Obama explained that it was a "temporary stopgap measure," not a "permanent fix." The White House, *Remarks by the President on Immigration* (June 15, 2012), https://go.usa.gov/xnZFY. And he urged Congress to act "because these kids deserve to plan their lives in more than two-year increments." *Ibid.* Even assuming DACA was lawful, a discretionary policy that can be revoked at any time cannot create legally cognizable reliance interests —and certainly not beyond the stated duration (generally two years) of deferred-action grants. Nothing in the INA prevents the Secretary of Homeland Security from changing her "national immigration enforcement policies and priorities." 6 U.S.C. 202(5).[8]

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[8] In any event, the Acting Secretary's decision was respectful of the interests of existing DACA recipients. Based on her reasonable evaluation of the litigation risk posed by the imminent lawsuit against the DACA policy, the choice she faced was between a gradual, orderly, and administrative wind-down of the policy, and the risk of an immediate, disruptive, and court-imposed one. Her decision to phase out the policy over a two-and-a-half-year period, permitting a period of additional renewals and permitting renewed and existing grants of deferred action to expire by their terms was, by far, the more humane choice.

2. The rescission was reasonable in light of the Acting Secretary's determination that DACA is unlawful

The Acting Secretary's decision is independently supported by her reasonable conclusion, informed by the Attorney General's advice, that indefinitely continuing the DACA policy would itself have been unlawful. As detailed above, the Fifth Circuit had already concluded that the DAPA and expanded DACA policies were procedurally and substantively invalid in a decision that four Justices of this Court voted to affirm. See pp. 26-27, *supra*. The Attorney General expressed his agreement with the conclusion reached by the Fifth Circuit in a decision that applies equally to the original DACA policy. See App., *infra*, 114a (concluding that the DACA policy was "effectuated * * * without proper statutory authority and with no established end-date, after Congress' repeated rejection of proposed legislation that would have accomplished a similar result"). It cannot be that the Acting Secretary's decision to rescind DACA on the basis of the Fifth Circuit's decision, this Court's equally divided affirmance, and the Attorney General's opinion was the type of "clear error of judgment," *State Farm*, 463 U.S. at 43 (citation omitted), that would make it arbitrary and capricious under the APA.

The district court concluded that the Acting Secretary could not rely on an assessment of DACA's legality unless it was correct as a matter of law. See App., *infra*, 42a ("When agency action is based on a flawed legal premise, it may be set aside as 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'") (citing *Massachusetts* v. *EPA*, 549 U.S. 497, 532 (2007)). Relying on the Secretary's broad discretion in "[e]stablishing national immigration enforcement policies and priorities," 6 U.S.C. 202(5), and DHS's "long and recognized practice" of granting deferred action (along with work authorization and other benefits) on a programmatic basis, the court concluded that, in its view, DACA was lawful. App., *infra*, 45a; see *id.* at 42a-48a. But the Fifth Circuit rejected those precise considerations when offered in support of the DAPA and expanded DACA policies. See *Texas*, 809 F.3d at 183.

More fundamentally, the district court was wrong to conclude that the Acting Secretary's discretionary decision to end a particular enforcement policy of doubtful legality must automatically be set aside if a court subsequently decides that the policy was lawful. App., *infra*, 42a. The court relied on this Court's decision in *Massachusetts* v. *EPA*, *supra*, for that proposition. But in that case a provision of the Clean Air Act spoke directly to the agency decision at issue, and *required* EPA to regulate any air pollutant which the agency concluded endangered public health or welfare. See 42 U.S.C. 7521(a)(1) (mandating that the EPA Administrator "shall" prescribe standards). The agency had "refused to comply with this clear statutory command" in part because it misunderstood its authority. 549 U.S. at 533. By contrast here, no one contends that the INA requires DHS to continue the DACA policy of deferred action. Rather, the DACA policy was created as a matter of the Acting Secretary's broad discretion to set enforcement priorities. After careful review, she determined to rescind that discretionary policy, and nothing in either the APA or INA demands setting aside her lawful determination.[9]

[9] The district court also erred in enjoining the rescission of DACA on a "nationwide basis." App., *infra*, 66a. As the government has

CONCLUSION

The petition for a writ of certiorari before judgment should be granted.

Respectfully submitted.

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explained in its pending petition for a writ of certiorari in *Trump* v. *Hawaii*, No. 17-965 (filed Jan. 5, 2018), both constitutional and equitable principles require that injunctive relief be limited to a plaintiff's own cognizable injuries. See *Lewis* v. *Casey*, 518 U.S. 343, 357 (1996); *Madsen* v. *Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994). The district court's injunction contravenes that settled rule by sweeping far more broadly than redressing the harms of the specific respondents in this case.

Exhibit 13

Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

February 20, 2017

MEMORANDUM FOR: Kevin McAleenan
Acting Commissioner
U.S. Customs and Border Protection

Thomas D. Homan
Acting Director
U.S. Immigration and Customs Enforcement

Lori Scialabba
Acting Director
U.S. Citizenship and Immigration Services

Joseph B. Maher
Acting General Counsel

Dimple Shah
Acting Assistant Secretary for International Affairs

Chip Fulghum
Acting Undersecretary for Management

FROM: John Kelly
Secretary

SUBJECT: **Enforcement of the Immigration Laws to Serve the National Interest**

This memorandum implements the Executive Order entitled "Enhancing Public Safety in the Interior of the United States," issued by the President on January 25, 2017. It constitutes guidance for all Department personnel regarding the enforcement of the immigration laws of the United States, and is applicable to the activities of U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS). As such, it should inform enforcement and removal activities, detention decisions, administrative litigation, budget requests and execution, and strategic planning.

With the exception of the June 15, 2012, memorandum entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children," and the November 20, 2014 memorandum entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents,"[1] all existing conflicting directives, memoranda, or field guidance regarding the enforcement of our immigration laws and priorities for removal are hereby immediately rescinded—to the extent of the conflict—including, but not limited to, the November 20, 2014, memoranda entitled "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants," and "Secure Communities."

A. The Department's Enforcement Priorities

Congress has defined the Department's role and responsibilities regarding the enforcement of the immigration laws of the United States. Effective immediately, and consistent with Article II, Section 3 of the United States Constitution and Section 3331 of Title 5, United States Code, Department personnel shall faithfully execute the immigration laws of the United States against all removable aliens.

Except as specifically noted above, the Department no longer will exempt classes or categories of removable aliens from potential enforcement. In faithfully executing the immigration laws, Department personnel should take enforcement actions in accordance with applicable law. In order to achieve this goal, as noted below, I have directed ICE to hire 10,000 officers and agents expeditiously, subject to available resources, and to take enforcement actions consistent with available resources. However, in order to maximize the benefit to public safety, to stem unlawful migration and to prevent fraud and misrepresentation, Department personnel should prioritize for removal those aliens described by Congress in Sections 212(a)(2), (a)(3), and (a)(6)(C), 235(b) and (c), and 237(a)(2) and (4) of the Immigration and Nationality Act (INA).

Additionally, regardless of the basis of removability, Department personnel should prioritize removable aliens who: (1) have been convicted of any criminal offense; (2) have been charged with any criminal offense that has not been resolved; (3) have committed acts which constitute a chargeable criminal offense; (4) have engaged in fraud or willful misrepresentation in connection with any official matter before a governmental agency; (5) have abused any program related to receipt of public benefits; (6) are subject to a final order of removal but have not complied with their legal obligation to depart the United States; or (7) in the judgment of an immigration officer, otherwise pose a risk to public safety or national security. The Director of ICE, the Commissioner of CBP, and the Director of USCIS may, as they determine is appropriate, issue further guidance to allocate appropriate resources to prioritize enforcement activities within these categories—for example, by prioritizing enforcement activities against removable aliens who are convicted felons or who are involved in gang activity or drug trafficking.

[1] The November 20, 2014, memorandum will be addressed in future guidance.

B. Strengthening Programs to Facilitate the Efficient and Faithful Execution of the Immigration Laws of the United States

Facilitating the efficient and faithful execution of the immigration laws of the United States—and prioritizing the Department's resources—requires the use of all available systems and enforcement tools by Department personnel.

Through passage of the immigration laws, Congress established a comprehensive statutory regime to remove aliens expeditiously from the United States in accordance with all applicable due process of law. I determine that the faithful execution of our immigration laws is best achieved by using all these statutory authorities to the greatest extent practicable. Accordingly, Department personnel shall make full use of these authorities.

Criminal aliens have demonstrated their disregard for the rule of law and pose a threat to persons residing in the United States. As such, criminal aliens are a priority for removal. The Priority Enforcement Program failed to achieve its stated objectives, added an unnecessary layer of uncertainty for the Department's personnel, and hampered the Department's enforcement of the immigration laws in the interior of the United States. Effective immediately, the Priority Enforcement Program is terminated and the Secure Communities Program shall be restored. To protect our communities and better facilitate the identification, detention, and removal of criminal aliens within constitutional and statutory parameters, the Department shall eliminate the existing Forms I-247D, I-247N, and I-247X, and replace them with a new form to more effectively communicate with recipient law enforcement agencies. However, until such forms are updated they may be used as an interim measure to ensure that detainers may still be issued, as appropriate.

ICE's Criminal Alien Program is an effective tool to facilitate the removal of criminal aliens from the United States, while also protecting our communities and conserving the Department's detention resources. Accordingly, ICE should devote available resources to expanding the use of the Criminal Alien Program in any willing jurisdiction in the United States. To the maximum extent possible, in coordination with the Executive Office for Immigration Review (EOIR), removal proceedings shall be initiated against aliens incarcerated in federal, state, and local correctional facilities under the Institutional Hearing and Removal Program pursuant to section 238(a) of the INA, and administrative removal processes, such as those under section 238(b) of the INA, shall be used in all eligible cases.

The INA § 287(g) Program has been a highly successful force multiplier that allows a qualified state or local law enforcement officer to be designated as an "immigration officer" for purposes of enforcing federal immigration law. Such officers have the authority to perform all law enforcement functions specified in section 287(a) of the INA, including the authority to investigate, identify, apprehend, arrest, detain, and conduct searches authorized under the INA, under the direction and supervision of the Department.

There are currently 32 law enforcement agencies in 16 states participating in the 287(g)

Program. In previous years, there were significantly more law enforcement agencies participating in the 287(g) Program. To the greatest extent practicable, the Director of ICE and Commissioner of CBP shall expand the 287(g) Program to include all qualified law enforcement agencies that request to participate and meet all program requirements. In furtherance of this direction and the guidance memorandum, "Implementing the President's Border Security and Immigration Enforcement Improvements Policies" (Feb. 20, 2017), the Commissioner of CBP is authorized, in addition to the Director of ICE, to accept State services and take other actions as appropriate to carry out immigration enforcement pursuant to section 287(g) of the INA.

C. Exercise of Prosecutorial Discretion

Unless otherwise directed, Department personnel may initiate enforcement actions against removable aliens encountered during the performance of their official duties and should act consistently with the President's enforcement priorities identified in his Executive Order and any further guidance issued pursuant to this memorandum. Department personnel have full authority to arrest or apprehend an alien whom an immigration officer has probable cause to believe is in violation of the immigration laws. They also have full authority to initiate removal proceedings against any alien who is subject to removal under any provision of the INA, and to refer appropriate cases for criminal prosecution. The Department shall prioritize aliens described in the Department's Enforcement Priorities (Section A) for arrest and removal. This is not intended to remove the individual, case-by-case decisions of immigration officers.

The exercise of prosecutorial discretion with regard to any alien who is subject to arrest, criminal prosecution, or removal in accordance with law shall be made on a case-by-case basis in consultation with the head of the field office component, where appropriate, of CBP, ICE, or USCIS that initiated or will initiate the enforcement action, regardless of which entity actually files any applicable charging documents: CBP Chief Patrol Agent, CBP Director of Field Operations, ICE Field Office Director, ICE Special Agent-in-Charge, or the USCIS Field Office Director, Asylum Office Director or Service Center Director.

Except as specifically provided in this memorandum, prosecutorial discretion shall not be exercised in a manner that exempts or excludes a specified class or category of aliens from enforcement of the immigration laws. The General Counsel shall issue guidance consistent with these principles to all attorneys involved in immigration proceedings.

D. Establishing the Victims of Immigration Crime Engagement (VOICE) Office

Criminal aliens routinely victimize Americans and other legal residents. Often, these victims are not provided adequate information about the offender, the offender's immigration status, or any enforcement action taken by ICE against the offender. Efforts by ICE to engage these victims have been hampered by prior Department of Homeland Security (DHS) policy extending certain Privacy Act protections to persons other than U.S. citizens and lawful permanent residents, leaving victims feeling marginalized and without a voice. Accordingly, I am establishing the Victims of Immigration Crime Engagement (VOICE) Office within the Office of the Director of ICE, which will create a programmatic liaison between ICE and the known victims of crimes committed by removable aliens. The liaison will facilitate engagement with the victims and their families to ensure, to the extent permitted by law, that they are provided information about the offender, including the offender's immigration status and custody status, and that their questions and concerns regarding immigration enforcement efforts are addressed.

To that end, I direct the Director of ICE to immediately reallocate any and all resources that are currently used to advocate on behalf of illegal aliens (except as necessary to comply with a judicial order) to the new VOICE Office, and to immediately terminate the provision of such outreach or advocacy services to illegal aliens.

Nothing herein may be construed to authorize disclosures that are prohibited by law or may relate to information that is Classified, Sensitive but Unclassified (SBU), Law Enforcement Sensitive (LES), For Official Use Only (FOUO), or similarly designated information that may relate to national security, law enforcement, or intelligence programs or operations, or disclosures that are reasonably likely to cause harm to any person.

E. Hiring Additional ICE Officers and Agents

To enforce the immigration laws effectively in the interior of the United States in accordance with the President's directives, additional ICE agents and officers are necessary. The Director of ICE shall—while ensuring consistency in training and standards—take all appropriate action to expeditiously hire 10,000 agents and officers, as well as additional operational and mission support and legal staff necessary to hire and support their activities. Human Capital leadership in CBP and ICE, in coordination with the Under Secretary for Management and the Chief Human Capital Officer, shall develop hiring plans that balance growth and interagency attrition by integrating workforce shaping and career paths for incumbents and new hires.

F. Establishment of Programs to Collect Authorized Civil Fines and Penalties

As soon as practicable, the Director of ICE, the Commissioner of CBP, and the Director of USCIS shall issue guidance and promulgate regulations, where required by law, to ensure the assessment and collection of all fines and penalties which the Department is authorized under the law to assess and collect from aliens and from those who facilitate their unlawful presence in the United States.

G. Aligning the Department's Privacy Policies With the Law

The Department will no longer afford Privacy Act rights and protections to persons who are neither U.S. citizens nor lawful permanent residents. The DHS Privacy Office will rescind the DHS *Privacy Policy Guidance memorandum*, dated January 7, 2009, which implemented the DHS "mixed systems" policy of administratively treating all personal information contained in DHS record systems as being subject to the Privacy Act regardless of the subject's immigration status. The DHS Privacy Office, with the assistance of the Office of the General Counsel, will develop new guidance specifying the appropriate treatment of personal information DHS maintains in its record systems.

H. Collecting and Reporting Data on Alien Apprehensions and Releases

The collection of data regarding aliens apprehended by ICE and the disposition of their cases will assist in the development of agency performance metrics and provide transparency in the immigration enforcement mission. Accordingly, to the extent permitted by law, the Director of ICE shall develop a standardized method of reporting statistical data regarding aliens apprehended by ICE and, at the earliest practicable time, provide monthly reports of such data to the public without charge.

The reporting method shall include uniform terminology and shall utilize a format that is easily understandable by the public and a medium that can be readily accessed. At a minimum, in addition to statistical information currently being publicly reported regarding apprehended aliens, the following categories of information must be included: country of citizenship, convicted criminals and the nature of their offenses, gang members, prior immigration violators, custody status of aliens and, if released, the reason for release and location of their release, aliens ordered removed, and aliens physically removed or returned.

The ICE Director shall also develop and provide a weekly report to the public, utilizing a medium that can be readily accessed without charge, of non-Federal jurisdictions that release aliens from their custody, notwithstanding that such aliens are subject to a detainer or similar request for custody issued by ICE to that jurisdiction. In addition to other relevant information, to the extent that such information is readily available, the report shall reflect the name of the jurisdiction, the citizenship and immigration status of the alien, the arrest, charge, or conviction for which each alien was in the custody of that jurisdiction, the date on which the ICE detainer or similar request for custody was served on the jurisdiction by ICE, the date of the alien's release from the custody of that jurisdiction and the reason for the release, an explanation concerning why the detainer or similar request for custody was not honored, and all arrests, charges, or convictions occurring after the alien's release from the custody of that jurisdiction.

I. No Private Right of Action

This document provides only internal DHS policy guidance, which may be modified, rescinded, or superseded at any time without notice. This guidance is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigation prerogatives of DHS.

In implementing these policies, I direct DHS Components to consult with legal counsel to ensure compliance with all applicable laws, including the Administrative Procedure Act.

Exhibit 14

My name is Kenneth Palinkas, and I am over the age of 18 and fully competent in all respects to make this declaration. I have personal knowledge and expertise of the matters herein stated.

I am currently the President of Local 0235, AFGE, AFL-CIO, located at 26 Federal Plaza in New York City. I was appointed President by AFGE in 2015 and was elected President in 2016. I am the former President of the National Citizenship and Immigration Services Council ("NCISC"). I started working for the Immigration and Naturalization Service beginning March 22, 1999. I have been a member of the American Federation of Government Employees (AFGE) since 2000.

I have also been a member of the National Citizenship and Immigration Services Council since March 4, 2011, when I was appointed to the position of Eastern Region Vice President that had been vacated. I was subsequently elected to the position of Executive Vice President of the NCISC August, 2012 and have served as the NCISC's President upon the resignation of the former President February 01, 2013. I served in that capacity until August 17, 2015. The NCISC is part of the American Federation of Government Employees and is a member Union of the AFL-CIO. NCISC represents over 18,000 employees at U.S. Citizenship and Immigration Services ("USCIS").

The Immigration Services Officers and Staff who work at USCIS throughout the country are hard working professionals and proud members of the law enforcement community. They are charged with, among other things, processing Citizenship applications, Adjustment of Status applications, managing the E-Verify system, and managing the Systematic Alien Verification for Entitlements ("SAVE") system, among other security systems throughout the country.

USCIS Immigration Services Officers and staff are the Nation's front-line defense for a safe and secure immigration system. We investigate applicants, scrutinize numerous applications, issue requests for evidence (RFE's), and conduct interviews. An interview is one of the most important and effective tools in an Officer's repertoire because it is the most effective way to detect fraud and to identify national security threats through hands-on vetting of all applicants seeking an immigration benefit.

However, USCIS management unfortunately has continually undermined the Immigration Service Officers' abilities to do his or her job by overscheduling work assignments or interviews and by not providing sufficient time to make proper adjudications. Management has continually transformed USCIS from a Service that serves to protect our national security and the rule of law, into one that instead serves to protect undocumented immigrants and their lawyers. This is what facilitated the changes in our titles from Adjudications Officers to Immigration Services Officers. Aliens seeking benefits have been referred to as "customers", further eroding the standards as contained in the INA.

Additionally, USCIS has employed the use of an electronic immigration system known as ELIS to allow applicants to request immigration benefits on line.

The so-called Deferred Action for Childhood Arrivals ("DACA") program has further compromised and eroded the goals that USCIS Officers pursue every day to protect our borders by ensuring that immigration benefits are granted for those who meet the criteria. The Service has been inundated with thousands upon thousands of DACA applications since 2012. And USCIS management has ensured that these applications are not properly screened as has it over assigned the workload for the completion of these applications to be favorably rubber stamped as long as they meet minimal requirements. They are not properly vetted as no DACA applicant is ever interviewed.

Since June 2012, USCIS has continually bypassed Congress and existing immigration law as contained in the Immigration and Nationality Act, with the enactment of the DACA program. This has led to the creation of a myriad of programs sanctioned by the Federal Government that has allowed for authorizing work permits, social security cards, medical and welfare benefits to a multitude of illegal immigrants. In the interim, taking a back seat to this avalanche of benefits bestowed on illegal aliens are the jobs, wages, benefits and security that rightfully belong to Americans and their families, as well as those individuals who applied for immigration benefits in accordance with existing law and procedure.

USCIS management has continued to process DACA applications through Service Centers located in Vermont, Texas, Nebraska, the National Benefits Center and California.

The approval of DACA applications far exceeds the amount of denials issued by USCIS by at least 90 percent according to USCIS's own statistics readily available on its website. There are currently 814,058 applications, of which 75,510 have been denied and 16,252 are pending a decision. To ensure that these numbers are correct, I believe a full investigation needs to be done by Congress to determine how many applications have been approved, how many have been denied, and how many more are pending adjudication.

The applicants for DACA are asking for temporary protected status so that they can remain in the U.S. until a determination can be made as to whether they are to remain in the U.S. and be eligible to file for permanent residency. Under the present system, there is no process in place to achieve this, and we need to develop criteria that protect the U.S. citizen at large, while we properly vet all DACA applicants and facilitate their abilities to legalize, weeding out those who do not merit consideration.

Many DACA applicants over the last few years applied for and received Advanced Parole enabling them to leave the United States and make a legal entry back into the country, thus making them eligible to file for a green card under certain circumstances. In reality, they jumped the line and were able to get permanent residence faster than legal and eligible applicants who filed under current USCIS rules and regulations

That is why a moratorium on the existing DACA program must be put into effect until a system is established that will ensure proper procedure and vetting for all. We should stop processing any and all pending DACA applications immediately.

All of the facts and information contained within this declaration are within my personal knowledge and are true and correct.

Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6th day of April, 2018.

KENNETH PALINKAS

Exhibit 15

U.S. Citizenship and Immigration Services

Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals, by Fiscal Year, Quarter, Intake, Biometrics and Case Status
Fiscal Year 2012-2017 (September 30)

Requests by Intake, Biometrics and Case Status

Period	Intake[1]				Biometrics[6]	Case Review[8]			
	Requests Accepted[2]	Requests Rejected[3]	Total Requests Received[4]	Average Accepted/Day[5]	Biometrics Scheduled[7]	Requests Under Review[9]	Approved[10]	Denied[11]	Pending[12]
Fiscal Year - Total [6]									
2012	152,431	5,395	157,826	3,629	124,055	38,024	1,680	-	150,751
2013	427,616	16,351	443,967	1,697	445,013	77,747	470,352	10,975	97,040
2014	238,900	24,887	263,787	952	209,670	101,568	158,336	20,992	156,612
2014 Initial	122,424	19,127	141,551	488	-	-	136,101	20,989	62,374
2014 Renewal	116,476	5,760	122,236	1,370	-	-	22,235	D	94,238
2015	448,856	35,474	484,330	1,781	525,499	48,355	510,007	21,355	74,106
2015 Initial	85,303	7,477	92,780	338	-	-	90,613	19,070	37,994
2015 Renewal	363,553	27,997	391,550	1,443	-	-	419,394	2,285	36,112
2016	260,701	12,317	273,018	1,035	68,140	-	198,702	14,427	121,678
2016 Initial	73,362	1,204	74,566	291	-	-	52,789	11,398	47,169
2016 Renewal	187,339	11,113	198,452	744	-	-	145,913	3,029	74,509
2017	472,873	43,429	516,302	1,884	-	-	462,713	13,193	118,645
2017 Initial	45,557	42	45,599	194	-	-	47,445	9,248	36,033
2017 Renewal	427,316	43,387	470,703	1,602	-	-	415,268	3,945	82,612
Total Cumulative	2,001,377	137,853	2,139,230	1,541	1,372,377	-	1,801,790	80,942	118,645
Total Cumulative Initial	906,693	49,596	956,289	698	-	-	798,980	71,680	36,033
Total Cumulative Renewal	1,094,684	88,257	1,182,941	1,305	-	-	1,002,810	9,262	82,612
Fiscal Year 2017 by Quarter [13]									
Q1. October - December	110,186	4,141	114,327	1,777	-	-	121,919	2,720	107,225
Q1. October - December Initial	15,326	15	15,341	247	-	-	18,239	2,091	42,165
Q1. October - December Renewal	94,860	4,126	98,986	1,530	-	-	103,680	629	65,060
Q2. January - March	132,784	19,266	152,050	2,142	-	-	124,700	4,137	111,172
Q2. January - March Initial	10,419	8	10,427	168	-	-	17,220	3,024	32,340
Q2. January - March Renewal	122,365	19,258	141,623	1,974	-	-	107,480	1,113	78,832
Q3. April - June	94,562	8,590	103,152	1,525	-	-	102,509	3,705	99,520
Q3. April - June Initial	10,977	8	10,985	177	-	-	5,827	2,719	34,771
Q3. April - June Renewal	83,585	8,582	92,167	1,348	-	-	96,682	986	64,749
Q4. July - September	135,341	11,432	146,773	2,115			113,585	2,631	118,645
Q4. July - September Initial	8,835	11	8,846	138			6,159	1,414	36,033
Q4. July - September Renewal	126,506	11,421	137,927	1,977			107,426	1,217	82,612

D - Data withheld to protect requestors' privacy.

- Represents zero.

[1]Refers to a request for USCIS to consider deferred removal action for an individual based on guidelines described in the Secretary of Homeland Security's memorandum issued June 15, 2012.
Each request is considered on a case-by-case basis.
See http://www.uscis.gov/childhoodarrivals.

[2]The number of new requests accepted at a Lockbox during the reporting period.

[3]The number of requests rejected at a Lockbox during the reporting period.

[4]The number of requests that were received at a Lockbox during the reporting period.

[5]The number of requests accepted per day at a Lockbox as of the end of the reporting period. Also note the average accepted per day for initial plus renewal will not equal the total average.

[6]Refers to capture of requestors' biometrics.

[7]The number of appointments scheduled to capture requestors' biometrics during the reporting period.

[8]Refers to consideration of deferring action on a case-by-case basis during the reporting period.

[9]The number of new requests received and entered into a case-tracking system during the reporting period.

[10]The number of requests approved during the reporting period.

[11]The number of requests that were denied, terminated, or withdrawn during the reporting period.

[12]The number of requests awaiting a decision as of the end of the reporting period.

[13]Data on biometrics scheduled is not available past January 31, 2016. Totals reflect up to January 31, 2016.

NOTE: 1. Some requests approved or denied may have been received in previous reporting periods.
2. The report reflects the most up-to-date estimate available at the time the report is generated.

Source: Department of Homeland Security, U.S. Citizenship and Immigration Services, Biometrics Capture Systems, CIS Consolidated Operational Repository (CISCOR), September 30th, 2017

U.S. Citizenship and Immigration Services

Number of Form I-821D,Consideration of Deferred Action for Childhood Arrivals,
by Fiscal Year, Quarter, Intake, Biometrics and Case Status
Fiscal Year 2012-2017 (September 30)

Requests by Intake, Biometrics and Case Status

Period	Intake[1]				Biometrics[6]	Case Review[8]			
	Requests Accepted[2]	Requests Rejected[3]	Total Requests Received[4]	Average Accepted/Day[5]	Biometrics Scheduled[7]	Requests Under Review[9]	Approved[10]	Denied[11]	Pending[12]

Top Countries of Origin	Accepted to Date[1]			Approved to Date[2]		
	Initials	Renewals	Total	Initials	Renewals	Total
Mexico	705,125	857,475	1,562,600	627,666	785,675	1,413,341
El Salvador	34,430	41,531	75,961	28,754	37,843	66,597
Guatemala	24,852	27,219	52,071	20,187	24,706	44,893
Honduras	22,634	26,167	48,801	18,486	23,590	42,076
Peru	9,816	13,169	22,985	9,147	12,189	21,336
South Korea	7,893	12,832	20,725	7,309	11,964	19,273
Brazil	8,591	9,963	18,554	7,429	9,136	16,565
Ecuador	7,774	9,442	17,216	6,750	8,558	15,308
Colombia	7,285	9,221	16,506	6,631	8,537	15,168
Philippines	5,112	6,804	11,916	4,692	6,390	11,082
Argentina	5,249	6,357	11,606	4,833	5,876	10,709
India	3,782	4,869	8,651	3,205	4,496	7,701
Jamaica	4,430	4,387	8,817	3,464	4,025	7,489
Venezuela	3,481	4,283	7,764	3,119	3,954	7,073
Dominican Republic	3,812	3,752	7,564	3,169	3,428	6,597
Uruguay	2,636	2,980	5,616	2,395	2,709	5,104
Bolivia	2,232	3,005	5,237	2,080	2,768	4,848
Unknown	2,724	2,744	5,468	2,067	2,305	4,372
Costa Rica	2,287	2,834	5,121	2,065	2,623	4,688
Poland	1,998	2,407	4,405	1,808	2,226	4,034
Chile	1,907	2,446	4,353	1,763	2,251	4,014
Pakistan	1,947	2,415	4,362	1,697	2,222	3,919
Tobago	2,441	1,715	4,156	2,094	1,702	3,796
Nicaragua	1,900	2,114	4,014	1,601	1,948	3,549
Guyana	1,483	1,748	3,231	1,277	1,621	2,898

Residence	Accepted to Date[1]			Approved to Date[2]		
	Initials	Renewals	Total	Initials	Renewals	Total
California	246,140	256,248	502,388	224,737	238,464	463,201
Texas	142,635	138,005	280,640	125,239	128,812	254,051
New York	51,462	80,850	132,312	43,138	72,637	115,775
Missing	16,517	100,782	117,299	9,768	89,320	99,088
Florida	41,582	67,495	109,077	33,631	59,249	92,880
Illinois	46,279	45,797	92,076	42,701	42,833	85,534
New Jersey	26,479	37,351	63,830	22,471	33,654	56,125
Arizona	31,040	29,458	60,498	28,028	27,350	55,378
North Carolina	29,881	26,798	56,679	27,515	25,169	52,684
Georgia	29,058	28,162	57,220	24,322	26,047	50,369
Washington	19,978	21,345	41,323	18,037	19,713	37,750
Colorado	19,351	17,677	37,028	17,369	16,497	33,866
Virginia	14,350	19,207	33,557	12,357	17,382	29,739
Nevada	14,326	14,690	29,016	13,160	13,741	26,901
Maryland	11,845	15,976	27,821	9,957	14,350	24,307
Massachusetts	9,955	17,248	27,203	8,172	15,174	23,346
Oregon	12,219	11,758	23,977	11,356	11,020	22,376
Indiana	10,841	9,946	20,787	9,894	9,293	19,187
Pennsylvania	7,476	13,151	20,627	6,084	11,711	17,795
Utah	10,617	9,124	19,741	9,749	8,533	18,282
Michigan	7,569	10,936	18,505	6,563	9,801	16,364
Tennessee	9,430	8,822	18,252	8,407	8,165	16,572
Wisconsin	8,252	7,786	16,038	7,610	7,278	14,888
Minnesota	7,116	8,914	16,030	6,324	8,004	14,328
Oklahoma	7,567	7,152	14,719	6,915	6,742	13,657
Kansas	7,397	6,926	14,323	6,849	6,497	13,346
Connecticut	5,854	8,558	14,412	5,038	7,752	12,790
New Mexico	7,498	6,422	13,920	6,858	6,063	12,921
South Carolina	7,257	6,650	13,907	6,454	6,171	12,625
Ohio	5,474	7,908	13,382	4,524	6,992	11,516

.	Accepted to Date[1]			Approved to Date[2]		
	Initials	Renewals	Total	Initials	Renewals	Total
Arkansas	5,668	5,149	10,817	5,124	4,815	9,939
Alabama	4,861	4,600	9,461	4,304	4,270	8,574
Missouri	3,983	4,801	8,784	3,569	4,374	7,943
Nebraska	3,848	3,932	7,780	3,399	3,603	7,002
Kentucky	3,517	3,777	7,294	3,084	3,423	6,507
Iowa	3,211	3,841	7,052	2,826	3,483	6,309
Idaho	3,427	3,335	6,762	3,158	3,113	6,271
Louisiana	2,492	3,285	5,777	2,089	2,946	5,035
Rhode Island	1,508	2,616	4,124	1,264	2,338	3,602
Hawaii	856	2,974	3,830	617	2,623	3,240
Delaware	1,645	1,902	3,547	1,461	1,755	3,216
Mississippi	1,723	1,704	3,427	1,476	1,578	3,054
District of Columbia	987	1,783	2,770	787	1,558	2,345
Puerto Rico	571	1,966	2,537	357	1,610	1,967
Unknown	233	1,738	1,971	139	1,494	1,633
New Hampshire	476	1,038	1,514	381	904	1,285
Wyoming	699	653	1,352	624	608	1,232
Alaska	216	757	973	151	644	795
South Dakota	316	487	803	259	435	694
Maine	146	555	701	105	501	606
Guam	115	556	671	68	492	560
North Dakota	151	511	662	106	431	537
Virgin Islands	168	353	521	104	314	418
West Virginia	157	333	490	118	286	404
Montana	92	250	342	77	222	299
Vermont	66	278	344	45	245	290
Armed Forces-Pacific	33	118	151	19	109	128
Armed Forces-Europe, Middle East, Africa, Canada	28	105	133	17	91	108
Armed Forces-Americas (except Canada)	19	76	95	12	73	85
Northern Mariana Islands	32	32	64	11	25	36
Not Reported	4	37	41	2	33	35

D Data withheld to protect requestors' privacy.
- Represents zero.
[1] The number of requests that were accepted to date of the reporting period.
[2] The number of requests that were accepted to date of the reporting period.
[3] All fields with less than 10 or a blank in the state field are included in the field "not reported."
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2) The report reflects the most up-to-date estimate data available at the time the report is generated.
Source: Department of Homeland Security, U.S. Citizenship and Immigration Services, Biometrics Capture Systems, CIS Consolidated Operational Repository (CISCOR), September 2017